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VOLUME VI

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1960

No. 306

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, APPELLANT,

vs.

UNITED STATES, ET AL.

No. 307

EZRA TAFT BENSON, SECRETARY OF AGRICULTURE OF THE UNITED STATES, APPELLANT,

vs.

UNITED STATES, ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

FILED AUGUST 9, 1960
PROBABLE JURISDICTION NOTED OCTOBER 17, 1960

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APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WISCONSIN

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[fol. 3204]

Transcript of Proceedings—April 12, 1955

COLLOQUY BETWEEN EXAMINER AND COUNSEL

Exam. Dishman: The hearing will come to order, gentlemen.

Mr. Torinus: Mr. Examiner, I understand that there will be an additional appearance this morning by Mr. Byers who appeared out at Portland, and he has a brief statement he wishes to make.

Exam. Dishman: All right.

Mr. Torinus: I suggest we proceed with Mr. Byers before the remainder of the railroad testimony.

Mr. Maguire: Before Mr. Byers starts on his statement I would like to make a request upon the intervenors, Great Northern and Northern Pacific, and that is that they make available to me copies of all contracts having to do with the operation by the Spokane, Portland and Seattle Railway over the tracks of the Northern Pacific to and into Spokane and also over the tracks of the Great Northern to and into Spokane. Those contracts have been referred to in the pleadings and referred to in the testimony of witnesses, and I should like to have the opportunity of examination.

Mr. Rockwood: We will consider your request and take a look and see what there is. I don't say right now that we will accede to your request, but we will advise you—when do you want them, to cross-examine who?

Mr. Maguire: I don't necessarily want them for cross-examination. I may want them for rebuttal, however. It doesn't have to be before the close of this current hearing.

[fol. 3205] Mr. Rockwood: We will take a look at them, Mr. Maguire.

Exam. Dishman: You will advise later, Mr. Rockwood?

Mr. Rockwood: Yes, indeed.

Mr. Maguire: Do I understand that the two intervenors do not agree at this time to furnish any such—

Exam. Dishman (interrupting): That is my understanding.

Mr. Torinus: We haven't disagreed either, Mr. Maguire.

Exam. Dishman: You are just holding your reply in abeyance, is that right?

Mr. Torinus: We will give your request consideration and advise you before the close of this hearing the result of that consideration.

Exam. Dishman: We are ready for the new appearance.

Mr. Byers: Mr. Examiner, my name is Paul K. Byers, and I am the General Chairman of the Brotherhood of Railroad Trainmen on the Northern Pacific Railroad appearing at this hearing in the capacity of representing all of the operating labor organizations on both the Great Northern and the Northern Pacific Railroad. The record will show that I appeared at the Portland hearing on June 24 as an intervenor in support of the defendant in this case.

Exam. Dishman: Do you want to appear now as a witness?

Mr. Byers: I want to offer a statement, Mr. Examiner.

Mr. Torinus: He has some testimony, I understand, Mr. Examiner.

Exam. Dishman: Have you been sworn?

[fol. 3206] Mr. Byers: No, I believe not.

PAUL K. BYERS was sworn and testified as follows:

Direct examination.

The Witness: The organizations that I represent are both the Northern Pacific and the Great Northern Railroad and comprise all the men employed in the operating end of the industry, and on the Great Northern we represent 5864 employees, and on the Northern Pacific we represent 5,117 men. This is the average number of employees taken from the monthly report of employees who are in service and compensated each month as an average in the year of 1954, and these figures are from records that are available in the Interstate Commerce Commission, as reports submitted to the Commission.

These organizations are interested in this case because of the possibility of loss of traffic and revenue to these two lines in opening up additional routes over the Milwaukee Railroad.

Exhibit No. 46, offered by Mr. H. D. Lear for the Great Northern, shows that based on 1953 traffic handled by the Great Northern in connection with the S. P. and S. involved in this case amounts to 27,292 cars, on which the Great Northern Railroad received over $11,000,000 in revenue. This is traffic which the Milwaukee could handle if it would win this case.

Exhibit No. 47, offered by Mr. W. J. Webb of the North-
[fol. 3207] ern Pacific Railroad, shows that the Northern Pacific handled 26,631 cars in the same time, with revenue amounting to almost $11,000,000.

The organizations are deeply interested because if any part of this traffic is lost to the Northern Pacific and Great Northern, it could mean loss of revenue to these lines and forced reduction of employees. This reduction could be by the loss of trains or other forced economies that result from loss of revenue.

The people we represent are located at numerous points in all the states in which the Great Northern and Northern Pacific operate and in towns that are not now reached by the Milwaukee Railroad. They depend on traffic moving over the Northern Pacific and the Great Northern for employment and receive their pay from the carriers by whom they are employed from the revenues received by these lines and which is received from this traffic that is now being handled.

Reduction in traffic and revenue means loss of jobs and dislocation of families, and there is no assurance to the organizations or to the employees that we represent that these people who may be dislocated would find employment on the Milwaukee or any other railroad, and even if they did find employment, they would suffer loss of seniority on the present property on which they are employed and be required to start on another railroad as a new employee.

The organization likes to point out that when the Com-
[fol. 3208] mission determines where public interest lies in

a case of this kind that our organization represents a group of people who are an important part of this public. And the fact that thousands of the employees we represent may be affected, we feel that the organizations do have a direct interest in this case.

That is all I have to say, Mr. Examiner.

Exam. Dishman: Are there any questions, Mr. Torinus?

Mr. Torinus: I have no questions.

Mr. Rockwood: I haven't any.

Mr. Maguire: I have no questions.

Exam. Dishman: The witness is excused.

(Witness excused.)

Exam. Dishman: The exhibit being distributed will be Exhibit No. 65.

(Defendant's Exhibit No. 65, witness Christiansen, was marked for identification.)

J. A. CHRISTIANSEN was sworn and testified as follows:

Direct examination.

By Mr. Boe:

Q. Will you state your name and address, please?

A. J. A. Christiansen. My address is 139 West Van Buren Street, Chicago 5, Illinois.

Q. What is your business or occupation, Mr. Christiansen?

A. I am General Freight Agent of the Chicago, Rock Island and Pacific Railroad Company.

Q. How long have you been in the employ of that company and its predecessors and interests?

[fol. 3209] A. I have been with the Rock Island 33 years. All of that time has been in the Freight Traffic Department, various assignments including rate adjustments, statistical work divisions, tariff compilations, and for the last 12 years have been handling interstate commerce matters and matters before the state commissions.

Q. Are you a practitioner before the Interstate Commerce Commission?

A. I am.

Q. Mr. Christiansen, have you been present recently throughout these proceedings and the proceedings last held at Portland, Oregon?

A. Yes, sir.

Q. Would you state in a general way where the principal trunk lines of the Chicago, Rock Island and Pacific Railroad Company lie?

A. The Rock Island Railroad operates a little over eight thousand miles of railroad in 14 states, in what is known as Western Trunk Line Territory. That includes the States of Colorado, Illinois, Iowa, Kansas, southern Minnesota, northern Missouri, southeastern Nebraska, and South Dakota. With respect to Southwestern Freight Bureau territory, that includes the States of Arkansas, Louisiana, southern Missouri, New Mexico, Oklahoma and Texas. The Rock Island also serves Memphis, Tennessee. Although that is a southern point, it is included with the southwest insofar as our operation is concerned.

[fol. 3210] The dividing line through Missouri as between western trunk line and southwestern territory follows certain lines of the Frisco Railroad, the Missouri Pacific, and the Rock Island from St. Louis to Kansas City, parallel and south of the Missouri River.

The Rock Island has a line operating from Minneapolis to Chicago, which goes through Albert Lea, Minnesota, Cedar Rapids, Iowa, Davenport, Iowa, and Rock Island, Illinois.

We also have a main line from Minneapolis to Kansas City, Missouri, through Mason City, Iowa, Des Moines, Iowa, and Trenton, Missouri. That line also continues on into the territory west of the Missouri River to Topeka and Wichita, Kansas, and then into southwestern territory, serving Fort Worth, Dallas, Galveston, and Houston, Texas.

East from Oklahoma City we have a line through Little Rock, Arkansas, to Memphis, Tennessee, and south from Little Rock to Eunice, Louisiana.

Westward from Oklahoma City the line extends through the Oklahoma and Texas panhandle, through Amerillo, Texas, to Tucumcari, New Mexico. At Tucumcari that line joins with the main line to Chicago, via Davenport, Iowa, Kansas City, Missouri, Topeka and Hutchinson, Kansas, and Dallas, Texas. Thence both of those lines connect with the Southern Pacific through El Paso to Arizona and California.

Eastward from Denver and Colorado Springs the Rock [fol. 3211] Island also has a line extending through the northern part of Kansas, and in the north-central part of that state the line divides, one line serving Lincoln, Nebraska, Omaha, Nebraska, Des Moines, Iowa, Davenport, Iowa, and Chicago, while the other fork of that line serves Topeka, Kansas, Kansas City, Missouri, and St. Louis, Missouri. All of this territory is very important in this case because of the fact that the Rock Island in the territory, particularly east of the Missouri River, has 65 points which are common with the Milwaukee Railroad, and of those 65 stations 38 are actual interchange points where we have track connections with the Milwaukee.

Q. Have you finished with that question, Mr. Christiansen?

A. Yes, sir.

Q. Did you prepare or cause to be prepared an exhibit which has been marked for identification Exhibit No. 65?

A. I did.

Q. Now leading up to the preparation of that exhibit did you obtain from representatives of the Northern Pacific Company and Great Northern Company cards which had references to cars received from those companies at Minnesota Transfer?

A. Yes, sir.

Q. What did you do with those cards in connection with this exhibit which has been marked for identification Exhibit No. 65?

A. These cards were sent to the accounting department of the Rock Island with instructions to complete the routing [fol. 3212] so that we could determine the exact amount of service of the Rock Island on the shipments indicated by

those cards. While the Great Northern furnished us with a record of movement for the entire year of 1953, we used only those cards for shipments in the months of February, May, August, and November of 1953, inasmuch as that was the only study made by the Northern Pacific, and we wanted a corresponding period for both lines. When those cards were sorted and the routes shown, they were returned to my office and we proceeded to analyze the traffic movement and prepare this statement which has been identified as Exhibit 65.

Q. Now will you proceed to explain Exhibit No. 65?

A. This exhibit shows traffic interchanged between the Rock Island and the Great Northern and Northern Pacific during the test period of four months in 1953, either direct with those lines at the Twin Cities, which includes Minneapolis, St. Paul, or Minnesota transfer, or by use of the M. N. and S. Railroad as a cross-over line between the Twin Cities and North Field, Minnesota, with the Rock Island.

The traffic was divided into the territories and indicated on the exhibit, using the normal territorial descriptions, official territory being that area lying generally east of the Illinois-Indiana State Line and north of the Ohio River. The southern territory being that portion of the United States generally south of the Ohio River and east of the Mississippi River. Western trunk line territory and south-[fol. 3213] western territory insofar as the Rock Island is concerned have already been described.

To or from official and southern territories the Rock Island serves only as an intermediate line, since it does not have stations located in either one of those territories.

In western trunk line and southwestern territories, however, the traffic was broken down, first, to show stations actually located on the Rock Island and stations not located on that line. In either instance the exhibit shows a further subdivision as between competitive and non-competitive traffic. Competitive traffic insofar as this exhibit is concerned means only that the station to which the shipments moved or from which they moved were served by both the Rock Island and the Milwaukee Railroad. Everything else is considered or is shown here as non-competitive.

With respect to the shipments on which the Rock Island served as an intermediate line, that same general subdivision was made, except that the junction point at which the traffic left the rails of the Rock Island was used in determining whether the traffic was competitive or non-competitive.

Beyond that I believe the exhibit is self-explanatory as to the figures indicated thereon.

Q. You did refer to the Minneapolis, North Field and Southern Railway Company. Can you state approximately between which points it operates in connection with bringing traffic from the Minnesota transfer down to points on the Rock Island or beyond?

[fol. 3214] A. Well, insofar as our line is concerned it operates as a cross-over line between the Twin Cities and North Field, Minnesota, as explained in the note at the top of page 2 of the Exhibit. This is a distance of approximately 40 miles. We included it in this exhibit because that is one of the usual routes, included in connection with all of our traffic.

Q. Mr. Christiansen, going to another subject, do you know whether or not the Rock Island has representatives in the Pacific Northwest, and, if so, will you state at what points they are located?

A. Yes. The Rock Island has representatives at Eugene, Oregon, Portland, Oregon, Seattle, Washington, Spokane, Washington.

Q. Are shipments of lumber and forest products which originate in the Pacific Northwest, particularly on the Spokane, Portland and Seattle Railway Company specifically routed or is there a so-called open routing in connection with shipments of that kind?

A. Well, it is sort of a combination. They are specifically routed to the extent required by the tariff as to the transcontinental gateway. Beyond that gateway they may be routed as to the carriers involved, but generally the junctions between those carriers are not shown.

Q. Can you give an example of how that would operate in connection with the Milwaukee Railroad, for instance, if a shipment was obtained by it from the S. P. and S. and

[fol. 3215] billed to a point in western trunk line or eastern territory?

A. Well, in general practice it would work in this manner, I believe, and that is that the junction between the S. P. and S. and the Milwaukee would be shown, but there would be no junction shown on the billing as between the Milwaukee and the Rock Island, so that the Milwaukee would be free to take it to whatever junction it saw fit, and instead of getting the traffic at the Twin Cities as we now do from the Great Northern or Northern Pacific, we would be short-hauled very likely and obtain it as a junction as close as possible to the final destination.

Q. Could you give a more specific example, for instance, on a shipment moving to a destination in Iowa where the Milwaukee and Rock Island, I take it, have numerous points of interchange?

A. Well, one of the best examples that comes to my mind would be shipments destined Newton, Iowa. We actually had shipments of lumber going to that point during the test period already indicated, and the traffic was received by us at the Twin Cities. Under the proposed arrangement the Milwaukee could very well take that traffic to Des Moines, Iowa, and turn it over to the Rock Island and we would get a haul of about eight miles.

Q. Is that an unusual example or could that be multiplied many times?

A. That is a very common practice.

Q. Are the Twin Cities the only point of possible loss of traffic to the Rock Island in the event the Milwaukee should [fol. 3216] succeed in its complaint here or are there other points that render possible loss?

A. These are not the only points of interchange. The traffic study which was made during the test period included traffic moving via the Laurel gateway in connection with the C. B. and Q. We received some of that traffic from the C. B. and Q. at Denver and received the long-haul from Denver, Colorado, into Texas or into other points in the southwest, where our service and our revenue is considerably greater than it would have been through the Twin Cities.

Q. What are some of the points on the Missouri River or other large points served by both the Rock Island and the Milwaukee Railroad?

A. Oh, Council Bluffs, Kansas City, that is, Council Bluffs and Omaha, Des Moines, Iowa, Davenport, Iowa, Chicago, Illinois, stand out as the most prominent and most important junction points.

Q. Are there other lines of railroad operating south of Kansas City that are directly competitive with the Rock Island?

A. Oh, yes, we stand to lose the entire haul on some of this traffic where we were the intermediate line, because the Milwaukee could interchange direct to Kansas City with such lines as the Missouri Pacific and the Frisco, and we would lose out entirely.

Q. Mr. Christiansen, did you hear Mr. Finley testify as [fol. 3217] to his estimate of loss of traffic in the event the Milwaukee should succeed in its petition here?

A. I did.

Q. Have you any ideas as to what the possible loss of traffic would be to the Rock Island in the event the Milwaukee should succeed in the complaint in this case?

A. In my judgment we would lose to the same extent as either of the northern lines, because whatever is loss to them as traffic moving through the Twin Cities would likewise be loss to us, and in addition to that there is the possibility of short-haul even on our traffic to local points.

Q. Are you taking into account the possibility of loss of traffic moving through other main gateways such as you referred to, Council Bluffs and Omaha, and Kansas City?

A. Yes, sir.

Q. It wouldn't necessarily move through the main transfer at all?

A. That is right.

Q. That is in addition to what Mr. Finley had in mind when he testified to an estimate of a one-third loss to his company?

A. I think so.

Q. Did you have anything else, Mr. Christiansen?

A. No, I believe not.

Mr. Boe: You may cross-examine, Mr. Maguire.

Mr. Torinus: Mr. Examiner, I have one question in the [fol. 3218] nature of further direct with respect to Exhibit 65.

Direct examination.

By Mr. Torinus:

Q. Line one you show a total of 657 cars handled by the Rock Island to and from S. P. and S. points or rather between S. P. and S. system points and official territory. Is that figure 657 just for the four months period, Mr. Christiansen?

A. Yes, sir.

Q. So that if you wished to determine how many cars the Rock Island handled to and from official territory you would multiply the figure six fifty-seven by three the same as you have multiplied the total four months down at the bottom, one one two nine by three, to determine the annual amount of business, is that right?

A. That is right.

Q. And the same would be true with respect to the figure sixty-six thousand four sixty-one seventy in line one, if we wish to determine the amount of revenue involved as far as the Rock Island is concerned on traffic to and from official territory on an annual basis we multiply that by three, is that correct?

A. Yes, sir, that is true of each of the figures in either one of those columns.

Mr. Torinus: That is all I have.

Mr. James: May I ask one question, I think probably it is clear.

[fol. 3219] Direct examination.

By Mr. James:

Q. I understood you to say to Mr. Boe that this information contained on your exhibit represented traffic received

by your railroad from the northern lines. Does it also show the traffic moving in the other direction?

A. Yes, sir.

Mr. James: Thank you.

Further redirect examination.

By Mr. Boe:

Q. In connection with that question you have two blocks on your Exhibit No. 65, eastbound and westbound, possibly you can explain in the light of what Mr. James has questioned here what those two blocks have reference to.

A. Well, the eastbound traffic is anything received from the G. N. or the N. P. at the Twin Cities or at North Field from the M. N. and S., and the westbound is traffic delivered to those lines.

Mr. Boe: Mr. Maguire?

Cross examination.

By Mr. Maguire:

Q. Mr. Christiansen, just one preliminary question here. Did you make a check to see, with regard to the Great Northern data, for 12 months of the year, to see whether blowing up your four months which you picked would bring approximately the same result as using the 12 months?

A. No, I didn't, Mr. Maguire. That is such a common practice in making traffic studies that we have found in past [fol. 3220] experience that it works out so closely that we don't need to question it.

Q. So you did not question it in this case?

A. That is right.

Q. Even though you had the figures at your disposal?

A. That is right.

Q. And the reason you did this was to place both of the two St. Paul lines on the same basis so far as the figures were concerned?

A. Yes, sir.

Q. Because you only had the four months for the Northern Pacific?

A. That is right.

Q. Are you prepared to state how many points you serve which are common points with the Burlington route?

A. No, I have made no check of that.

Q. Can you give us any information on that? Do you serve a substantial number of common points with the Burlington?

A. Quite a few. I wouldn't hazard a guess even as to the exact number.

Q. Quite a few satisfies me. And quite a few of that quite a few you have direct interchange, don't you, with the Burlington?

A. Not too many.

Q. I would like to inquire further about the Minneapolis, North Field and Southern Railway. Is there any affiliation between the Minneapolis, North Field and Southern and the Rock Island system?

[fol. 3221] A. No, sir.

Q. And they get in on this business by reason, some of this bridge business by reason, of routing by the shippers, I assume?

A. Yes, I would say so.

Q. Does the Rock Island line extend into the Twin Cities?

A. Not over our own rails; no, sir.

Q. But the Rock Island does operate into the Twin Cities?

A. Yes, sir.

Q. And is in position the same as other of the intervenors who have appeared in behalf of the defendants, the western trunk line intervenors, you are in the same position as they are with regard to picking up traffic coming eastbound, we will say, from the Great Northern, or Northern Pacific, and the Milwaukee at the Twin Cities?

Mr. Boe: Mr. Maguire, you refer to western trunk line intervenors, did you mean western trunk line defendants? We are defendants not intervenors.

Mr. Maguire: Yes, that was a misnomer. Thank you, Mr. Boe.

A. Yes, we handle traffic by our line from the Twin Cities. In fact, the bulk of it moves that way.

Q. I don't suppose you would be able to say as to what proportion of the amounts shown on the Exhibit 65 covers traffic handled by the Minneapolis, North Field and Southern, would you?

A. As I recall it, about a third of the traffic moved that way, but, of course, that wouldn't be from a revenue standpoint.

[fol. 3222] Q. No.

A. That would be just strictly number of cars.

Q. As a matter of fact, the Rock Island receives a substantial number of cars of lumber from the Milwaukee Road at Minnesota transfer, either directly or through the Minneapolis, North Field and Southern at the present time, do they not? I am referring to lumber which originates on the Milwaukee itself.

A. We made no check of that, Mr. Maguire, at all.

Q. Do you know from your general knowledge of the situation whether that is not a fact?

A. I would say we receive some traffic but as to the volume I would have no idea.

Q. Would you want to hazard an opinion as to whether it is a substantial volume? I don't mean a majority, but is it in substance?

A. I believe so.

Q. Does the Rock Island maintain an office and office force at Eugene, Oregon?

A. Yes, sir.

Q. And you are very actively soliciting routing of lumber—

A. (Interrupting) Yes, sir.

Q. (Continuing) —at Eugene?

A. Yes, sir.

Q. Now, I don't want to get into a wrangle with you, Mr. Christiansen, but I wish you would consider again your statement that lumber shipments are specifically routed to [fol. 3223] the gateways and thence only by carriers but not by junction, as a matter of fact, isn't it the general custom to route either on firm sales where your routing is completely mapped out to destination or on so-called transit cars, as they have been defined in this proceeding, after

diversion orders have been issued, routing via the junction so that the shipper—so that it will facilitate tracing of the cars?

A. There has been a certain amount of that but I have checked some of those shipments and found that the routing was inserted along the way.

Q. Inserted along the way, that was due to diversion orders which had been received?

A. Not necessarily.

Q. Did you check to see whether they were diversion orders?

A. Yes, sir.

Q. And you found there were no diversion orders?

A. In many instances.

Q. In many instances there were not?

A. Yes, sir.

Q. O. K. Do you know whether or not the Milwaukee Road at the present time maintains a full line of rates with the Rock Island via Council Bluffs and Kansas City to southwestern territory? That is true, isn't it?

A. I think so. I have made no detailed check of it.

Q. And also we have a line of rates through the Twin [fol. 3224] Cities junction to practically all points upon your system, do we not?

A. Yes.

Q. You didn't make any check to see what treatment the Milwaukee is giving you at the present time so far as handing over traffic to you at these junctions, did you?

A. Not recently but my past experience has been to the effect if the shipments weren't specifically routed and the junctions shown that we got it at the most distant point that the Milwaukee could take it, Kansas City, Des Moines, Chicago.

Q. There is nothing immoral about that, is there?

A. No.

Q. Everybody does that?

A. That's right.

Q. You do the same thing yourself to your connections, don't you?

A. Yes, sir.

Q. And so far as routing to common points between the Rock Island and the Burlington, which moves into the transfer or to Laurel, via one of the northern lines, you get into that business only if you go out and solicit it, don't you? That is not handed to you on a platter by anybody, is it?

A. Except to the extent of the so-called routed traffic which is a matter of reciprocity and I would assume that that is a small portion of the total.

Q. You talk about unrouted traffic, are you talking [fol. 3225] about lumber shipments?

A. Well, to some extent; yes.

Q. Is there any unrouted lumber business?

A. Specifically, I don't know of any.

Q. And where it is unrouted traffic? Does the Great Northern or the Northern Pacific, as the case may be, distribute between the Rock Island and the Burlington?

A. Yes, sir.

Q. They make divisions between you. Do you know what the proportion of that division is?

A. No, I don't.

Q. But, as you say, it is a very small amount, anyway?

A. Yes; and it is based upon reciprocity.

Q. Upon what you give them?

A. That is right.

Q. Let's look at your exhibit, Mr. Christiansen, in your western trunk line territory. The business which you feel would be open to solicitation by the Milwaukee would be the business shown in Line No. 1 under that heading "Competitive", wouldn't it?

A. That is only part of it.

Q. The other, the non-competitive, as I understand your apprehension is that your haul might be shortened by the Milwaukee carrier to the nearest junction point—

A. Oh, we can lose a very substantial portion of that. While it is non-competitive between the Rock Island and the [fol. 3226] Milwaukee a number of those destinations are served by a number of other lines and the Milwaukee could deliver to those other lines rather than the Rock Island so we could lose it entirely.

Q. That is, unrouted traffic could be delivered to those other lines?

A. Well, a large portion of that traffic comes without any junction indicated down in that part of the territory.

Q. If the Rock Island were named as a carrier in your routing the Milwaukee could not turn that over to someone else, could it?

A. No. That is right.

Q. As you stated before, when you were talking about the Northern Pacific and the Great Northern on a reciprocity basis, dividing unrouted traffic between yourselves and other lines, including the Burlington, that is a small proportion, is it not?

A. Well, that is traffic that is definitely unrouted by the shipper. That doesn't pertain to this traffic on which no junction is shown even though the shipper may specify routing up to the transcontinental gateway.

Q. Now we are talking about, Mr. Christiansen, about your fear that the Milwaukee will turn it over to one of your competitors instead of to you, that you won't get any haul out of it?

A. That is right.

Q. Well, now, that would be impossible to accomplish except in the case of unrouted shipments, wouldn't it, beyond the junction point?

[fol. 3227] A. There is still the problem of solicitation against the Rock Island, nevertheless.

Q. You are very actively soliciting right now, aren't you?

A. We are doing our best.

Q. And the Milwaukee is actively soliciting right now?

A. Yes, sir.

Q. And yet you manage against the Milwaukee to procure a good deal of business out of the Twin Cities, do you not?

A. Yes, but this competitive change just adds another competitive route.

Q. And you, I think, were here when Mr. Finley of the Great Northern was testifying, weren't you?

A. Yes, sir.

Q. You heard his statement to the effect that the origin

line is the one that has the advantage of solicitation, that an intermediate line, they are just in the common rut, so to speak?

A. That is right.

Q. So even the Milwaukee if its length of line was extended would still be in the intermediate line like yourself, would it not?

A. To those points that are not served by the Milwaukee?

Q. Yes.

A. That is right.

Q. It would always be an intermediate and destination line, never an originating line like yourselves?

[fol. 3228] A. That is right.

Q. Who is the final judge as to how traffic will be routed in the great majority of cases? With whom does the decision rest? It is the shipper or the consignee, isn't it?

A. The shipper or consignee generally, but there is an awful lot of it that they just don't route.

Q. But on your lumber shipments I think we are agreed that the great majority of the lumber shipments are routed at least as to carrier, if not as to junction point, we can agree that far, can't we?

A. I think so.

Q. So if you would lose business to the Milwaukee by reason of granting of the Milwaukee's request is something that the public evidently would prefer some element in the Milwaukee service?

A. I wouldn't say necessarily prefer.

Q. Well, they don't just pull the roads out of a hat to go over a route, do they? They exercise some judgment on it, don't they, the people who control the routing?

A. They may have special reasons.

Q. But you feel that the establishment of a longer haul to the Milwaukee would establish another reason to bring business to the Milwaukee and take some of it away from the Rock Island?

A. No; it is just a solicitation point, argument.

Q. Does all this diversion of traffic depend upon the talents and gift of gab of solicitors between the two companies?

[fol. 3229] A. I think a large point of it does.

Q. Do you think the Milwaukee can out-talk the Rock Island solicitors?

Mr. Boe: I object to that.

Mr. Maguire: I want to follow through this witness' thought on this as to why he thinks he is going to lose the business.

Exam. Dishman: The witness may answer if he has views on the subject.

A. Well, I think the minute you add additional routes and the additional solicitors on other lines you decrease the amount that would go via the present lines. There is bound to be a further subdivision of the present traffic.

By Mr. Maguire:

Q. Where do you get the idea that there will be additional solicitors? The Milwaukee has a solicitor in Eugene, for example, as well as the Rock Island, where do you get the idea there will be additional solicitors?

A. Additional solicitation effort is not necessarily an increase in force, it is an increase in effort when the tariffs are revised and additional routes are added.

Q. Don't you think the Milwaukee solicitation forces are really using all of their talents at the present time?

A. Yes, but they are not directed along the routes that will be available under this proposal.

Q. In other words, you feel that they will have an additional selling point?

[fol. 3230] A. That is right.

Q. And, of course, the additional route that you talk about is only between Spokane and Minnesota transfer, isn't it?

A. That isn't what I understand.

Mr. Boe: Isn't what you understand, I didn't understand that.

Mr. Maguire: He said that is not what he understands.

By Mr. Maguire:

Q. So far as the physical operation is concerned it simply means that the Milwaukee will get the shipments at Spokane instead of the Twin Cities, at points beyond the Milwaukee's lines, isn't that true?

A. But it wouldn't be restricted to the Twin Cities gateway on the east end.

Q. Oh, no, that is true enough, that is, you mean it doesn't have to terminate there? So far as the physical operation is concerned that will be the difference, won't it?

A. To a large extent.

Q. And, of course, to local points, that is, to points—now, in the western trunk line territory, at these 65 common points with the Rock Island, of the Rock Island and the Milwaukee, the Milwaukee right now as to all except a very limited number of those points has this route that you are afraid of from Spokane, don't they?

A. From points on the S. P. and S.?

Q. Yes.

Mr. Rockwood: Are you referring to some particular commodity?

[fol. 3231] Mr. Maguire: I am talking about lumber. We are still talking about lumber.

By Mr. Maguire:

Q. That is true, isn't it, Mr. Christiansen?

A. I think so, yes.

Q. And so, so far as that traffic is concerned, you have nothing to fear because that route is already in existence, isn't that true?

A. Well, that would be true to the extent that you have routes available today; yes.

Q. Well, let's just look at them a minute. I think probably you are more familiar with Mr. Ehlen's exhibit. I will give you that.

Mr. Rockwood: Here is a copy of it. That is Exhibit 28, and I am handing him a copy of it.

Mr. Maguire: You say that is Exhibit 28?

Mr. Rockwood: Yes.

By Mr. Maguire:

Q. Now, there all through Iowa, with very few—you see that territory marked in yellow in Iowa?

A. Yes, sir.

Q. That includes a great many of the common points which you mentioned?

A. That's right.

Q. And so you already have that disadvantage at the present time and the Milwaukee would gain no further advantage by reason of the establishment of an additional route, would it, through Spokane?

[fol. 3232] A. Well, but this traffic study covered by Exhibit 65 is traffic on which the routing does not today apply. That is all we covered here, either origin, destination territory.

Q. I realize that, Mr. Christiansen. That is traffic which you handled, isn't it?

A. Yes, sir.

Q. But the Milwaukee still has the advantage to your common points within the territory which is colored in yellow on Exhibit 28. it right now, and has for some years past, had that advantage which you fear in western trunk line territory common points?

A. Well, not as to the origin territory covered by this Exhibit.

Q. The only exception is the Santiam line of the S. P. and S., isn't it?

A. Well, that's the only traffic, as I understand, that was covered by these cards furnished to us.

Q. You mean that only covers traffic originating on the Santiam line of the S. P. and S.? It covers the entire S. P. and S. system, doesn't it?

A. Not to my understanding.

Mr. Boe: Did you understand that question, Mr. Christiansen?

The Witness: Yes.

By Mr. Maguire:

Q. Is it your understanding of Exhibits 46 and 47, that is Mr. Lear's and Mr. Webb's, do they only show traffic

[fol. 3233] originating on the Santiam branch of the Oregon Electric?

A. My understanding, those exhibits were made up based on the present tariff applications and the difference between that application and the proposed application.

Q. But, as a matter of fact, you have made some study, of course, of the rates and routes herein before, haven't you?

A. Generally, yes.

Q. You know from your study and as demonstrated by Mr. Ehlen's Exhibit No. 28 that a great deal of that traffic in western trunk line territory which you designated as what would be competitive under the Milwaukee proposal is competitive right now to the same extent, isn't it?

A. Oh, yes.

Q. That is, the Milwaukee has routing through Spokane, and has the long-haul to these common points in western trunk line territory?

A. Yes.

Q. So that that picture will be unchanged, then, wouldn't it, so far as traffic to those particular points is concerned? It is already there?

A. It is there, yes.

Q. So then there is no additional hazard that would be created with regard to the traffic to those particular common points in western trunk line territory by the granting of the complaint, is that true?

[fol. 3234] Mr. Boe: I object to that question. It is not specific enough to identify what territory and what points he is referring to.

By Mr. Maguire:

Q. Mr. Christiansen, do you understand what points I am talking about?

A. I understood you to say the competitive points.

Q. The competitive points, which are colored in yellow on Mr. Ehlen's exhibit, that is what we have been talking about all this time.

Exam. Dishman: If you understand the question—

Mr. Torinus (interrupting): Just a minute. I don't understand the points in yellow are common points.

Mr. Maguire: I said such of those as are common points.

Mr. Torinus: I understood you to say all the yellow points were common points.

Mr. Maguire: Oh, no, no.

Mr. Rockwood: May I inquire when you say common you are referring common to the Milwaukee and the road of this witness?

Mr. Maguire: That is all we have been talking about.

Mr. Rockwood: I just wanted to be sure, thank you.

Mr. Maguire: Also, Mr. Torinus, for your information, it was brought out by the witness, brought out from the witness, that there are many of the common points which he mentioned between the Rock Island and the Milwaukee are points which are covered in yellow on the exhibit. Now, are you kind of straightened out now?

[fol. 3235] Mr. Torinus: I didn't know that I needed to be straightened out, Mr. Maguire.

Exam. Dishman: Let's proceed.

A. Let's go back to the question, if you please.

(The question was read as follows:

"Q. So then there is no additional hazard that would be created with regard to the traffic to those particular common points in western trunk line territory by the granting of the complaint, is that true?")

Mr. Boe: Do you understand that question?

The Witness: I think so.

A. I think the hazard is created to the extent that we now receive our long-haul from the Twin Cities in connection with traffic moving over the G. N. or the N. P., and with additional solicitation of the Milwaukee we stand to lose it.

By Mr. Maguire:

Q. Well, the Milwaukee is already soliciting long-haul traffic from Spokane to such of these yellow points shown on Mr. Ehlen's exhibit as are common with the Rock Island, they are already doing that, aren't they?

A. Yes.

Q. And you don't think that the Milwaukee aren't working hard enough with soliciting that business, do you?

A. I wouldn't know.

Q. But you think that they will get an additional shot [fol. 3236] in the arm, so to speak, which will make them solicit harder for routes that they already enjoy, is that your theory?

Mr. Boe: I object to that. That's argumentative.

Mr. Maguire: No, I want to get his thoughts on this, he has said he is going to lose something.

Exam. Dishman: Mr. Witness, you have ideas on that, do you not, if the Milwaukee should prevail here already they have an additional advantage as to routes into that area?

The Witness: I think it improves their general situation, Mr. Examiner.

Exam. Dishman: As to those points Mr. Maguire is talking about?

The Witness: Yes.

Mr. Boe: Of course, we wouldn't have a petition here if they didn't think it would be improved.

Exam. Dishman: In what way would their position be improved?

The Witness: By getting additional traffic.

Exam. Dishman: Well, I mean as to routes.

Isn't that what you were asking, Mr. Maguire?

Mr. Maguire: Yes.

Mr. Boe: That wasn't the question. The question was a shotgun question.

Exam. Dishman: I am asking now as to routes. I understand that was the tenor of the question.

Would there be any change as far as routes are concerned?

[fol. 3237] The Witness: From some origins; yes.

Mr. Maguire: What origins?

The Witness: And we have some traffic today that routes that way.

By Mr. Maguire:

Q. What origins, Mr. Christiansen?

A. As specified by the complaint.

Q. But you already have routes, as I pointed out, and as Mr. Ehlen's exhibit shows, through Spokane to all of this yellow territory via the Milwaukee. Now, what additional routes to that yellow territory would be secured by the granting of the complaint?

A. It isn't a question of additional routes from the territory shown there, but there are additional routes from the other territory where you do not have rates today or routes.

Q. All right. Which ones, which territory?

A. Well, according to Mr. Ehlen's exhibit it indicates that you don't have routes from points on the Santiam branch, for example.

Q. Well, you know—you heard Mr. Ehlen's testimony at Portland to the effect that the question has been docketed with the Transcontinental Freight Bureau to make routes effective from the Santiam branch voluntarily?

A. I heard that.

Q. And so that that will be, so far as the defendants, S. P. and S. and the intervenors, Great Northern and Northern Pacific, are concerned, that is conceded, isn't it, [fol. 3238] so the granting of the complaint is not going to open up anything, it is going to be by voluntary action of the defendants and their intervenors?

A. That would be true, if it is approved.

Mr. Maguire: Oh, I think that is all, Mr. Christiansen, thank you.

Exam. Dishman: Is that all, Mr. Maguire?

Mr. Maguire: That is all I have.

Exam. Dishman: Did you have anything more, Mr. Boe?

Mr. Boe: Yes, there is some redirect.

Redirect examination.

By Mr. Boe:

Q. Mr. Christiansen, Mr. Maguire asked you in the early part of his cross-examination about interchange of traffic between the Milwaukee and Rock Island at Minnesota transfer, and he referred to substantial volume of that and you agreed it might be a substantial volume without specifying what you had in mind in number of cars. Did you understand that that traffic would be to destinations that are served by both the Milwaukee and the Rock Island or did you assume from the nature of that question that that was traffic that might have to be turned over to the Rock Island because it went to destinations local to the Rock Island?

A. I would presume it would be to destinations on the Rock Island.

Q. You wouldn't take into that answer the type of traffic that was competitive with the Milwaukee?

[fol. 3239] A. No, sir.

Q. In connection with the last series of questions that were asked you by Mr. Maguire, did you have in mind in connection with those answers, that that had reference to traffic moving to official territory or only to western trunk line territory?

A. That was limited to western trunk line territory.

Q. And what did you have to say with respect to official territory?

Mr. Maguire: I object to that as improper redirect. I didn't ask the witness anything about official territory.

Exam. Dishman: What is your purpose of that question, Mr. Boe?

Mr. Boe: The purpose of that question is to show that Mr. Maguire referred only to western trunk line. If he is limiting it to that, I am willing to stand—

Mr. Maguire (interrupting): —I said nothing about official territory, I didn't ask him anything about it.

Mr. Boe: All right.

Thank you, Mr. Christiansen, that is all.

I offer Exhibit No. 65 at this time.

Mr. Maguire: No objection.

Exam. Dishman: Exhibit No. 65 is received in evidence.

(Defendant's Exhibit No. 65, Witness Christiansen, was received in evidence.)

Mr. Maguire: I have one or two more questions of Mr. [fol. 3240] Christiansen which are based upon Mr. Boe's redirect.

Recross examination.

By Mr. Maguire:

Q. Of course, you understand that under our proposal, as at the present time, any lumber or any other traffic which the Milwaukee carries into the Twin Cities is open to solicitation by all lines reaching the Twin Cities regardless of whether that traffic is destined to a common point of the Milwaukee and the Twin City line? You understand that, don't you, Mr. Christiansen?

A. Well. I understand it but I think it is purely theoretical.

Q. Don't you think you get any traffic on lumber which originates, not on the S. P. and S. but on the Milwaukee in the State of Washington, which comes to the Twin Cities, don't you think you get any of that to common points by solicitation?

A. Very little.

Q. Have you any figures on that or are you just guessing?

A. That is my experience.

Q. Do you have any figures on it?

A. No, sir.

Q. And, as a matter of fact, you maintain here a very active solicitation force, and I talk of that advisedly because I have met them, in the Pacific Northwest for the purpose of getting what traffic you can which is available to you at the wide open gateways of the Twin Cities and the Columbia River points, don't you?

[fol. 3241-42] A. Yes, sir, that is what they are there for.

Mr. Maguire: That is all.

Exam. Dishman: Is that all?

Mr. Boe: That is all.

Exam. Dishman: The witness is excused.

(Witness excused.)

[fol. 3243] Exam. Dishman: We will have a short recess.

(Short recess.)

Exam. Dishman: On the record.

Mr. Musenbrock: I have four exhibits now that I will distribute.

Exam. Dishman: Mr. Musenbrock, will you please identify the four exhibits which have been distributed, the first one will be No. 66. Which is that?

Mr. Musenbrock: No. 66 is, as the witness will testify later, is the so-called, or first of all is a white and black map of the M. & St.L. Railway system, and encircled in red thereon are the common points on the M. & St.L. system with the Milwaukee Railroad. In the lower left-hand corner it has a legend stating "Outlined in red are points on the M. & St.L. Railway which are also reached by the Milwaukee Railroad."

67 is another system black and white map of the M. & St.L. system with the addition in colored crayons of various routings, as the witness will explain later, and it has the legend in the lower left-hand corner "Routing on lumber S.P.S, O.E. & O.T. to M. & St.L."

Exhibit No. 68 is another black and white map of the M. & St.L. with the addition added thereto in colored crayons of routings via the Milwaukee to the M. & St.L., and in the lower left-hand corner it has a legend, "Routing on lumber, Milwaukee to M. & St.L."

[fol. 3244] Exhibit 69 is a print map of the M. & St.L. Railway system, and in the upper right-hand corner it has the legend "The M. & St.L. Railway Company gateway routing map, the Peoria Gateway."

(Defendant's Exhibits Nos. 66, 67, 68, and 69, Witness Swanson, were marked for identification.)

Mr. Musenbrock: There will be some more exhibits later but for the present those are all I have numbered and identified.

J. A. SWANSON was sworn and testified as follows:

Direct examination.

By Mr. Musenbrock:

Q. Mr. Swanson, will you identify yourself for the record?

A. My name is J. A. Swanson. I am employed by the Minneapolis and St. Louis Railway Company as its general freight agent with offices at 111 East Franklin Avenue, Minneapolis, Minnesota.

Q. And as general freight agent what are your duties?

A. I have supervision, general supervision, over the matter of freight rates and routing as it involves our railroad.

Q. When you say supervision over, you are in charge of it?

A. That is correct.

Q. How long have you been with the M. & St.L. system?

A. I came to the M. & St.L. Railway in June of 1932.

Q. In what capacity?

A. I came as a clerk. I was appointed as chief of tariff bureau in 1939, October, assistant general freight agent in [fol. 3245] October 1950, and general freight agent December—or that should be 1940—general freight agent December 1950.

Q. And prior to 1932, when you came with the M. & St.L., did you have any other railroad experience?

A. I had ten years of service in the tariff department of the Soo Line railroad.

Q. So ten years with the Soo Line and twenty-two with the M. & St.L., that is thirty-two years, you have tariff experience with these two railroads?

A. That is correct.

Q. Mr. Swanson, are you familiar with this present docket now being heard before this Commission?

A. Yes, I am.

Q. Do you know what the issues are—

A. (Interrupting) Yes.

Q. (Continuing) —and the proposal of the Milwaukee Railroad?

A. I do.

Q. In connection with this and for presentation at this hearing did you prepare some exhibits?

A. I did.

Q. There have been four exhibits previously marked Exhibits 66 to 69, inclusive.

A. Yes, sir.

Q. Are those some of the exhibits you prepared, Mr. Swanson?

A. They are exhibits prepared at my direction.

[fol. 3246] Q. Will you go on and state in your own way the purpose of these exhibits?

A. Well, the purpose of these exhibits is to show how the Milwaukee road, that is the purpose of Exhibit No. 66, is to show how the Milwaukee road, interlaces our line and serves points that are located thereon. I might say that track connections exist at all of the points encircled in red with the exception of Bradley, South Dakota, Sherburn, Minnesota, at the remainder of the points track connections exist between the two lines.

Q. Exhibit 66, does that depict the present M. & St.L. system mileage and trackage?

A. Well, it doesn't show the mileage. The system mileage is approximately 1,400 miles. I believe it to be 1,397 miles.

Q. And in what four states is that trackage located, Mr. Swanson?

A. Illinois, Iowa, Minnesota, and South Dakota.

Q. Those state lines are shown on Exhibit 66?

A. The state lines are shown, yes, sir.

Q. Is there any other purpose for Exhibit 66?

A. No, that covers the purpose of that exhibit.

Q. Turn to Exhibit 67, and will you explain Exhibit 67, Mr. Swanson?

A. Exhibit No. 67 sets forth the present tariff routing on lumber from origins on the S. P. and S. system lines to destinations on the Minneapolis and St. Louis Railroad.

Q. If you will elaborate on that a little more and pick out as—

[fol. 3247] A. (Interrupting) Well, it will be noted that our lines east generally have application via the Twin Cities in connection with the Great Northern and Northern Pacific

Railway as the intermediate carriers through the Twin Cities Gateways, Minneapolis, Minnesota Transfer, St. Paul, Minnesota. That routing via our western junctions is confined to the lines west of Winthrop, Minnesota, and South of Echo, Minnesota, on which segment of line we also have routing via Hanley Falls in addition to the Twin City routes.

For Fourth Section purposes much of the western line is restricted only to western junctions, that is, the line or railroad west of Echo, Minnesota.

Q. From this Exhibit 67 it would appear that the Gateway, the Twin City Gateway, applies where it is red colored and blue colored and black colored.

A. That is correct.

Q. To various points on the system?

A. That is correct.

Q. Now, these routes that are shown here, and using the Twin City Gateway as an example, are those the routes in connection with lumber off of the S. P. and S. and Oregon Electric and Oregon Trunk?

A. They are the routes that are being used to deliver traffic to these stations on our line.

Q. And to which joint rates apply?

[fol. 3248] A. Joint rates apply that way.

Q. Also in combination with points beyond the M. & St.L. system?

A. They do, that is, the red route will apply to points beyond Peoria, Illinois, for example.

Q. Whatever rate the red route carries will apply beyond Peoria?

A. Well, whatever the rate to destination may be that route will be available to it beyond Peoria in connection with our other roads beyond Peoria.

Q. Is there anything else in connection with that Exhibit 67?

A. I think not.

Q. Just one question on that. Exhibit 67, does that contain all the current applicable routings of the S. P. and S., Oregon Electric, and Oregon Trunk, of which the M. & St.L. is a participating carrier?

A. That is right.

Q. It is all inclusive?

A. It is all inclusive.

Q. Thank you. Now turn to Exhibit 68.

A. Exhibit No. 68 shows the routing on lumber available from origins on the Milwaukee Railroad in North Pacific Coast territory to destinations on our line. It will be noted that it follows a similar pattern of the routing from points on the S. P. and S. in that the Milwaukee road delivers to us at the Twin Cities and at Chaska junction point immediately south of the Twin Cities lumber traffic from its [fol. 3249] line to practically all of our Twin Cities Peoria line. There is a segment in red there where only the Chaska route is used, and I don't know the answer for that.

On our lines west of Winthrop, Minnesota, a pattern similar to that followed from the S. P. and S. origins is followed from the Milwaukee origins, as indicated by the dual colored lines west of Dawson, Minnesota, and the black line between Fairfax and Dawson.

Q. From this exhibit I think you testified that there are three junctions with the Milwaukee, the Twin City, Chaska, and Aberdeen, is that correct?

A. Those are the three junctions that are being used on lumber traffic from the west.

Q. That is, lumber traffic from the west from points on the Milwaukee in the west?

A. That is correct.

Q. Is this Exhibit 68 all inclusive of the current routes with the Milwaukee Railway?

A. It is.

Q. In connection with the Aberdeen route, Mr. Swanson, will you explain how far that applies in connection and on the M. & St.L. Railway?

A. The Aberdeen route applies only to points west of Winthrop, Minnesota.

Q. So that any interchange with the Milwaukee at [fol. 3250] Aberdeen would have to be destined to points on the Minneapolis and St. Louis west of Winthrop?

A. That is correct.

Q. Could not be anywhere else on the system?

A. No, sir.

Q. Is there anything else in connection with this map?

A. I have nothing to add at present.

Q. Now Exhibit 69.

A. The purpose of Exhibit No. 69 is to depict the routes available to overhead traffic, that is, traffic received by the M. & St.L. at the Twin Cities for example and delivered to its connections for movement through the Chicago Gateway or delivered by the M. & St.L. to its eastern connections at Peoria Gateway, and undertakes to set out the more important routes that we have available through the St. Louis-East St. Louis Gateways into the southwest through the Kansas City Gateway.

Q. From this map which would you say are important gateways to east and southeast and south traffic?

A. Well, of course, Chicago is an important gateway to the east. Our traffic is largely handled into Chicago via Albert Lea in connection with the Illinois Central Railroad.

Q. That is shown on this map?

A. That is shown on this map.

Peoria Gateway, of course, is our important gateway to the east. It is also a gateway to southeastern territory. [fol. 3251] We have routes through Peoria and St. Louis generally to southeastern territory. We have an important route via Albia in connection with the Wabash Railroad into St. Louis and to southeastern territory.

Our routes into the southwest are largely through Des Moines and connections to Kansas City or via the Albia and Wabash to Kansas City.

Q. How about Nemo, Illinois?

A. Nemo also is an important route into the southwest.

Q. In connection with the Santa Fe Railroad?

A. In connection with the Santa Fe Railroad.

Q. That is an up-to-date gateway routing map of the M. & St.L.?

A. Yes, it is.

Q. Mr. Swanson, have you examined the current tariffs which cover the movement of lumber of the S. P. and S. system, which includes the S. P. and S., the Oregon Electric and Oregon Trunk, to points on Mr. Ehlen's Exhibit 28?

A. I have.

Q. And also the application of any of those rates to points beyond?

A. Yes, I have.

Q. You understand also the Milwaukee's proposal in the instant docket?

A. I do that.

Q. What is your understanding as to the effect on these [fol. 3252] points shown in yellow, brown and red, if the Milwaukee were successful here from a rate and route standpoint?

A. Its effect on the points in yellow would be negligible. The Spokane Gateway is already available as to those points.

As to the points in brown it would give effect to advertised routes of the Milwaukee to those destinations which may now be reached under an intermediate application.

As to its effect to points in red it would establish a route via the S. P. and S. to Spokane, thence Milwaukee road to destination.

Q. And how about the Santiam branch?

A. At present the Santiam branch, the Spokane route is restricted not to apply to the points in yellow. It would open up a route from that branch to those points, as I understand the proposal.

Q. Your answer was confined to the routes and rates to the identical points in yellow, red or brown?

A. That is correct.

Q. How about points beyond those yellow, brown, or red points, in other words, eastern and southern and southeastern territory, for example?

A. You might color that section of the country red, it would have that effect, route via Spokane is not available by the Milwaukee to those beyond points.

Q. How about reconsignment or diversion privileges, do they have it at the present time under their current tariffs? [fol. 3253] A. They could not reconsign to that territory that would be red or beyond the points of the Milwaukee.

Q. If their proposal were here successful—

A. (Interrupting) That is correct.

Q. (Continuing) —what would happen?

A. If their proposal here were successful they would have wide open diversion privileges at all the points in

yellow to their own destinations marked in red and to points beyond.

Q. And the points in brown also?

A. Yes.

Q. Is there anything else that you have as your understanding in connection with Ehlen's Exhibit 28 as to the present proposal of the Milwaukee as to the route and rate situation, if successful?

A. I would say this, that there are many possibilities of setting up points for the diversion of traffic that would by-pass the Twin Cities and with the Twin Cities by-passed the M. & St.L. would have little or no chance to participate in the traffic. I have in mind such points as Canton, South Dakota, or any number of the junction points in the cross lines of the Milwaukee road.

Q. Is it your understanding of the proposal that if it is successful their available routes from Spokane would be wide open on lumber traffic?

A. That is my understanding.

Q. So that as to local points on the Milwaukee or common points on the Milwaukee with other lines and on [fol. 3254] overhead traffic to official territory and southern territory they could move over any available route east of Spokane?

A. That is right.

Q. I think you prepared three other exhibits, Mr. Swanson?

A. Yes, I did.

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

Mr. Musenbrock.

Mr. Musenbrock: For identification there have been three exhibits marked 70, 71, and 72, witness Swanson.

(Defendant's Exhibits Nos. 70, 71, and 72, Witness Swanson, were marked for identification.)

Mr. Musenbrock: Exhibit No. 70 is a map.

Exhibit 71 is a multigraph sheet or mimeograph or ditto

or whatever you call it of Carload Traffic Interchanged at Twin City Gateway 12 Months 1953. That's the heading.

Exhibit No. 72 is headed "Carload Traffic Interchanged at Twin City Gateway, Four Months 1953, February, May, August, November."

By Mr. Musenbrock:

Q. Mr. Swanson, Exhibit 70, did you have that prepared?

A. I did.

Q. And what does that purport to show?

A. Exhibit No. 70 is a map, a junction point map, of that portion of Western Truck Line territory served by [fol. 3255] our line shown in the heavy black marking on which has been superimposed the lines of the Milwaukee road in red markings, and it will be noted that they have us all wrapped up like a loaf of bread.

Q. The map itself, what is the source of it?

A. That is a photostat of the Western Truck Line junction point map.

Q. That is a scale map and the official map of the W.T.L.?

A. I believe it to be drawn substantially to scale. It is the official map of the Western Truck Line community.

Q. In the upper left-hand corner where the red and the black cross, is that Aberdeen, South Dakota?

A. That's Aberdeen, South Dakota.

Q. And from Aberdeen, South Dakota, to the Twin Cities, what is the mileage between the M. & St.L. and the Milwaukee? I notice they parallel one another.

A. I think it is substantially alike. They are parallel all the way from Aberdeen to the Twin Cities.

Q. With about how many miles separating the two lines, have you any idea?

A. Oh, in spots there are only 10 or 12 miles between the two lines.

Q. Does this map also show the parallel lines of the Milwaukee between the Twin Cities and south towards Mason City?

A. It does.

Q. And also the other lines that may be parallel or cross?

[fol. 3256] A. The line south of Spencer, Iowa, Des Moines, for example, parallels ours rather closely.

Q. In drafting this map of the Milwaukee on here in red, were attempts made to depict its present trackage?

A. That is correct. We eliminated such lines as has been abandoned that are shown on the map itself.

Q. They may be shown on the map in light color?

A. In light color but they have not been traced in red.

Q. Exhibit 71, Mr. Swanson, will you explain what Exhibit 71 is?

A. Exhibit 71 sets out the cars that are interchanged with our line at the Twin Cities by the Great Northern Railway from origins or to destinations on the S. P. and S. railway during the year of 1953. I might enlarge upon that exhibit and read into the record the revenue figures for the M. & St.L.—

Q. (Interrupting) Wait a minute, before you read those in. Is there any other explanation of the exhibit itself before you start adding to it, by east bound and west bound traffic?

A. Well, the east bound traffic is broken down to traffic terminating at stations on our line that are not common with the Milwaukee road, showing 68 cars to stations on our line that are common with the Milwaukee road, showing a volume of 80 cars, to stations in southwestern territory, showing a volume of 490 cars, and to stations beyond the M. & St.L., served also by the Milwaukee road, for example, Terre Haute, Indiana, as a representative point, showing a volume of 176 cars, and then the broad [fol. 3257] territory in the east and south beyond both our rails and the Milwaukee's rails where the bulk of the movement occurred or 1,236 cars.

I might observe that in running through the carloads from which this statement was drawn approximately 95 per cent or more of the east bound traffic consisted of lumber traffic.

Q. That is, lumber which is in the I.C.C. accounts as items 411 and 415?

A. That is correct.

Q. Now, west bound.

A. Similar showing is made on west bound traffic. The

volume of movement was substantially less and consists of any number of commodities. That is broken down in the same way to M. & St.L. local origins, and St.L. origins that are common with other lines. That included, incidentally, lines other than the Milwaukee road. And origins in southwestern territory, origins that are common between the Milwaukee and others where we serve as a bridge line, and, lastly, origins in that broad territory east and south of the eastern and southern gateways.

Q. I notice in west bound on the last two blocks you used the term bridge, but you don't use that on east bound traffic. Is any of that east bound traffic bridge traffic as far as the M. and St.L. is concerned?

A. Oh, yes, the last three items of east bound traffic are bridge traffic.

[fol. 3258] Exam Dishman: For the benefit of the record just explain what you mean by bridge traffic.

The Witness: I mean by that where the M. & St.L. is used solely as an intermediate carrier.

By Mr. Musenbrock:

Q. Give an example of that.

A. Well, traffic east bound from Portland, Oregon, to New York, New York, may be used as a bridge line from Minneapolis to Peoria, Illinois.

Q. And the M. & St.L. would be a bridge carrier as to those cars that move beyond in southwest territory and also beyond the M. & St.L. system and also into eastern and southern territory?

A. That is right.

Q. Incidentally, while I think of it, did you make some ink corrections on this exhibit?

A. Yes, sir, I did, I corrected the name of the S. P. and S. or the initials of the S. P. and S. Railway and the docket number of the case, which were typographical errors.

Q. Where was the source of the information that is depicted on this page?

A. They were drawn from cars that were furnished to us by the Great Northern Railway accounting department and embraced all of the shipments that moved via their line

in connection with the Minneapolis and St. Louis Railway.

Q. That is, and which originated on the S. P. and S. system?

A. That is originating or terminating on the S. P. and S. system.

[fol. 3259] Q. Glad you picked me up. Originating or terminating on the S. P. and S. system comprised of the S. P. and S. Railway, the Oregon Electric, and Oregon Trunk?

A. That is correct.

Q. As to Exhibit 72.

A. Exhibit 72 contains similar information on traffic handled by the Northern Pacific Railway between its junctions with the S. P. and S. Railway and the Twin Cities. This exhibit was prepared on the basis of four months' figures furnished us by the Northern Pacific Railway accounting department for the months of February, May, August, and November 1953, except for the projected totals in the head of the exhibit for the 12-month total, the figures shown are only for the four months and would have to be multiplied by three to get a constructive annual figure.

Q. What you mean there is, for instance, in the first block under east bound where it says to M. & St.L. stations 17—

A. (Interrupting) 17 would become—

Q. (Continuing) —cars and 2 per cent, that's for four months only?

A. Yes, 17 would become 51 but the 2 per cent would remain.

Q. The 2 per cent would remain. Did you state where the source of these figures was?

A. Yes, I did, the Northern Railway accounting department.

Q. Did you make some changes in ink on this exhibit?

A. I made similar changes in ink on this exhibit, showing [fol. 3260] the proper initials of the S. P. and S. and the proper docket number, which were typographical errors.

Q. Now, I note, Mr. Swanson, that these Exhibits 71

and 72 speak of cars and revenue is lacking. Have you any statistics on revenue on these cars?

A. Yes, I have drawn off the revenue on all of these cars.

Taking Exhibit No. 71—

Q. (Interrupting) Now, go slowly on this because we have to write it.

Mr. Maguire: May I interrupt for just a question of clarification?

Mr. Musenbrock: Surely.

By Mr. Maguire:

Q. Is this the Minneapolis and St. Louis system revenue that you are going to read us?

The Witness: It will be M. & St.L. system revenue, that is correct.

A. On Exhibit No. 71, under the east bound column, opposite the first entry covering 68 carloads, M. & St.L. System revenue was $7,665.37. Opposite the second entry to M. & St.L. stations common with the Milwaukee M. & St.L. system revenue was $8,109.86.

By Mr. Musenbrock:

Q. That is on the 80 cars?

A. On the 80 cars, yes.

Opposite the third entry to stations beyond the M. & St.L. in southwestern territory, where it is shown as 490 cars, M. & St.L. system revenue is $15,468.26.

[fol. 3261] Opposite the fourth entry, to stations beyond M. & St.L. served also by the Milwaukee, 176 cars, M. & St.L. system revenue is $9,192.05.

Opposite the last entry under the east bound column 1,236 cars, M. & St.L. system revenue is $107,238.67.

A footing for the total east bound revenue of the Great Northern Railway would be $147,674.21.

Under the west bound column, the one car from M. & St.L. origins produced M. & St.L. system revenue of $90.51.

The second entry, 25 cars produced M. & St.L. system revenue $6,549.88.

The third entry, comprised of 186 cars, produced M. & St.L. system revenue of $6,091.92.

The next entry, comprising 42 cars, produced M. & St.L. system revenue of $3,136.60.

The last entry under the west bound column, comprised of 231 cars, produced M. & St.L. system revenue of $50,854.56.

A total for west bound movement of $66,723.47, and a grand total for traffic handled in connection with the Great Northern Railway for the 12 months of 1953 of $214,397.68.

Q. On Exhibit 72, have you comparable revenue figures for that exhibit?

A. Yes, the revenue figures that I will read are projected on a 12 months basis by multiplying the actual revenue as derived from the information secured from [fol. 3262] the Northern Pacific Railway by three.

These M. & St.L. system revenues are as follows:

On east bound traffic to M. & St.L. stations there would be 15 cars with revenue of $6,598.77.

Q. That is, you took the revenue on the 17 cars and multiplied that by three to get it on an annual basis?

A. Yes, and I will also multiply the number of cars by three.

Q. And that explanation will carry through this entire exhibit?

A. That will carry through my testimony on this exhibit.

The second entry to M. & St.L. stations common with the Milwaukee there would be 99 cars and the revenue would be $10,924.62.

To stations beyond the M. & St.L. in southwestern territory there would be 291 cars, revenue $7,499.58.

To stations beyond the M. & St.L. served also by the Milwaukee there would be 309 cars, revenue $20,868.03.

The last entry, stations beyond the M. & St.L. and eastern and southern territories, there would be 1,392 cars, revenue $121,447.50.

The total east bound revenue of the Northern Pacific on a projected 12 months basis would be $167,338.50.

Now, west bound there would be nothing entered opposite the first entry.

From stations common with other lines, M. & St.L. stations, there would be 15 cars, revenue $3,109.26.

From southwestern origins by M. & St.L. as bridge there would be three cars, revenue of $334.56.

[fol. 3263] From origins common to the Milwaukee and others, M. & St.L. now serving as a bridge, there would be 66 cars, revenue $3,644.94.

From origins in the east and south, using M. & St.L. as a bridge, there would be 541 cars, revenue $53,862.84.

Total west bound revenue for a projected 12-months period would be $60,951.60. The total evenues for cars interchanged with the Northern Pacific Railway originating or terminating on the S. P. and S. system lines projected for a 12-month period would be $282,290.10.

Mr. Maguire: May I ask a question for clarification, Mr. Musenbrock?

Mr. Musenbrock: Surely.

Mr. Maguire: I wonder if you would recheck the last item in the west bound, three times 147 the way I get it is 441 rather than 541, is that right?

The Witness: You are absolutely right.

Mr. Maguire: Now I am wondering whether the change in that would affect your revenue at all.

The Witness: No, it wouldn't affect the revenue. The revenue is drawn off for the 147 cars and multiplied by three.

Mr. Maguire: I see. Thank you.

By Mr. Musenbrock:

Q. Incidentally, Mr. Swanson, on that N. P. business on Exhibit 72, is that all routed through to the Twin Cities Gateway?

A. Yes, all of it.

[fol. 3264] Q. The M. & St.L. has no other junction with the N. P. except the Twin Cities?

A. That's our only junction with the Northern Pacific.

Q. I wanted to get that clear. But Exhibit 71, the Great Northern, we have other junctions such as Hanley Falls?

A. We have Hanley Falls and Aberdeen as junctions with the Milwaukee where they interchange traffic with us.

Q. I meant the G. N.

A. Didn't I say the Great Northern?

Q. You said the Milwaukee.

A. Oh, excuse me.

Q. What is the answer as to the Great Northern?

A. We have junctions with the Great Northern Railway at Aberdeen, South Dakota, Hanley Falls, Minnesota, and the Twin Cities.

Q. But what percentage would you say of that revenue on Exhibit 71 comes over the Twin Cities Gateway on the G. N. business?

A. Well, it is either 100 per cent or very closely approaches 100 per cent.

Q. You testified, as you know the proposal of the Milwaukee here, and having in mind this map 70 as to the strategic position of both the M. & St.L. and the Milwaukee in Western Trunk Line territory interlacing one another and having in mind the revenue, Exhibits 71 and 72, have you formed an estimate as to what traffic is vulnerable so far as the M. & St.L. is concerned if the Milwaukee were successful here?

[fol. 3265] A. All of the traffic that the Milwaukee road could secure through its solicitation would be vulnerable to loss by the Minneapolis and St. Louis Railway Company.

Q. Have you broken that down as to figures, possibly?

A. Well, I have made an estimate here. Our total business east bound of the S. P. and S. system lines amounted to 4,192 cars. That was substantially equally divided between the Great Northern and the Northern Pacific Railway. With another line in there I presume that the division might also be somewhat equal or a third to each line, and that would result in a movement of 1,397 cars potentially via the Milwaukee road. We don't know how much of that might be retained by our own solicitation, but, as I stated before, it is practically all vulnerable to loss.

Q. You say there is a possibility of the Milwaukee getting 1,397 cars. What about the remainder, over the G. N. and N. P.?

A. Well, I presume that we could look for a two-thirds movement of traffic as set out in Exhibits 71 and 72 via those lines.

Q. All right. Have you broken down the 1,397 cars that you visualize might be lost to the Milwaukee?

A. Well, I made some breakdown of those cars, consisting of 119 cars of local business. I presume there would be no loss there. So one-third of those cars, even if they moved via the Milwaukee road, might be deducted from the 1,397 car figure—

Q. (Interrupting) Did you say one-third or did you mean 119 cars?

A. No, I mean one-third could be deducted from the [fol. 3266] vulnerable cars, would leave a total of 1,357 cars vulnerable to loss. Those would be competitive cars.

Q. So in the final analysis what is your estimate as to the possible loss of cars, that is, to this territory now that we are speaking of, if the Milwaukee were successful, that is, on a basis of cars?

A. Well, my estimate that I have just given would be 1,358 carloads of east bound traffic.

Q. That's based on movements shown in Exhibits 71 and 72?

A. That's correct.

Q. Is there any other potential loss if the Milwaukee were successful here in your estimation?

A. Yes, I think that the Milwaukee road would be in a position to sell the shipper at point of origin, routing via their line all the way as a single line carrier to common points with our road and junction points with carriers serving the broad territory in eastern and southern parts of the United States.

Q. And why do you say that?

A. Because I think that a shipper will respond to that type of solicitation. The fewer times the cars are interchanged seems to make the routes more attractive to the shipping public. Beyond that I might say that on such cars as are sold in transit the broad territory beyond the Milwaukee road might influence a substantial number of those cars to move via its line at Spokane, by-passing the Twin Cities Gateway.

[fol. 3267] Q. You lay stress on solicitation and the power of single line solicitation. Is that original with you or is that common thought in railroading?

A. Oh, I think it is quite common thought in railroading.

Mr. Rockwood: Common what, thought or talk?,

The Witness: Thought.

By Mr. Musenbrock:

Q. You listened to the cross-examination of Mr. Christiansen this morning, Mr. Swanson?

A. I did.

Q. Have you anything to say as to what the Milwaukee would have in the event they are successful here that they do not now have in connection with rates and routes on this lumber traffic?

A. Well, they would have this selling point to the shipper at S. P. and S. system origins that we are now open to the movement of all traffic, to points on our line and beyond our line, and if there should be a necessity to divert the car we are soliciting you will be open to that privilege.

Q. They don't have that privilege now?

A. That's right, they don't have it to certain points that we have previously described nor to points beyond their line.

Q. That is, they don't have it now so far as a carrier out of Spokane is concerned, they have it in common with the other W. T. L. where they pick it up at Minnesota Transfer?

A. That is right.

Q. Not out of Spokane, if they take the haul?

[fol. 3268] A. Not out of Spokane Gateway it is not available.

Q. You have been speaking of lumber on the M. & St.L., Mr. Swanson. Is lumber an important item of revenue to the M. & St.L.?

A. It was the third most important revenue producing commodity item under the I.C.C. commodity statistics during the year 1954.

Q. It was exceeded by two other commodities and what were they?

A. Corn was the first commodity and coal the second commodity, bituminous coal.

Q. Do you have the revenue figures as shown in the form A report to the I.C.C.?

A. No, I don't have them available at the present.

Q. But it was third in gross?

A. That is right. I remember the lumber revenue to be about one and a quarter million dollars.

Q. Was that peculiar for 1954?

A. No, it has been the pattern over a number of years.

Q. Now, there are two types of traffic that might move off the S. P. and S., routed traffic and unrouted traffic, you are familiar with both, are you, Mr. Swanson?

A. Yes.

Q. And you know as to routed traffic carriers have to follow shippers instructions?

A. That is correct.

Q. As to unrouted traffic has the M. & St.L. gotten any of that business either as a distinct line or as a bridge [fol. 3269] carrier, do you know?

A. Oh, we get considerable unrouted traffic from many of our connections.

Q. I mean, and I am speaking now of lumber off the S. P. and S. in connection with the G. N. and N. P. at the transfer.

A. I don't know how much of that is unrouted, but the Northern Pacific and the Great Northern would be in a position to deliver such traffic to us at the Twin Cities, particularly because they can carry it no further.

Q. Then what you mean to say is you have no particular knowledge of any such unrouted traffic?

A. I have not.

Q. But do you know that there is any given to the M. & St.L.?

A. Well, I know that we get a goodly amount of unrouted traffic. I don't how much of it may be lumber traffic off of the S. P. and S.

Q. O.K., I won't pursue that thought any more.

Does that complete the explanation of your Exhibits 66 to 72?

A. Yes, it does.

Mr. Musenbrock: I offer in evidence Exhibits 66 to 72, inclusive.

Mr. Maguire: No objection.

Exam. Dishman: Exhibits 66 to 72, inclusive, are received.

(Defendant's Exhibits Nos. 66 to 72, inclusive, Witness Swanson, were received in evidence.)

[fol. 3270] Exam. Dishman: Are there any other questions on direct by other counsel?

Mr. Rockwood: I have none.

Mr. Torinus: No questions.

Exam. Dishman: You may proceed, Mr. Maguire.

Cross examination.

By Mr. Maguire:

Q. I think we will start with your Exhibit No. 70, Mr. Swanson.

A. Fine.

Q. If you were to take this same map and put, say, the lines of the Chicago and Northwestern in place of the lines indicating the location of the Milwaukee road, you still would be, as you rather picturesquely put it, wrapped up like a loaf of bread, wouldn't you?

Mr. Musenbrock: I object to the question and ask that the answer be stricken. There is no issue involving the Northwestern such as the proposal the Milwaukee has here. Now comparison with the Northwestern and any other railroad than the Milwaukee I think is beyond the issues here.

Mr. Maguire: The reason I am asking is the very clear implication was given by counsel and the witness himself that the Milwaukee was sort of an octopus which was swallowing up the M. & St.L. I just want to bring out that the M. & St.L. is not wrapped up, as the witness put it, by the Milwaukee any more than it is wrapped up by any other lines.

[fol. 3271] Exam. Dishman: The witness has answered, you answered the question, did you not?

The Witness: I did.

Mr. Musenbrock: My objection will be noted on the record and my motion to strike.

Exam. Dishman: It will be allowed to stand for what it might be worth and your exceptions are noted.

By Mr. Maguire:

Q. And the same would apply to other of the larger midwestern carriers, would it not, Mr. Swanson?

A. No.

Q. You would say that the Milwaukee and the Northwestern are the two railroads which hem in the M. & St.L. to a greater extent than the others?

Mr. Musenbrock: Just a moment. Don't answer that Mr. Swanson.

I object to that question. There is no evidence here as to the Northwestern hemming in anybody. If he wants to keep to the Milwaukee, I think that is all right.

Mr. Maguire: I think if counsel wants to let his objection run to this general line of inquiry—

Exam. Dishman (interrupting): Yes, the witness has made a statement on the record as to what the Milwaukee, used the expression wrapped up by the Milwaukee like a loaf of bread.

Did you make that statement on the record?

The Witness: Yes, I did.

[fol. 3272] Exam. Dishman: I don't see any objection on cross-examination to bring out certain comparisons.

And your exceptions will be noted.

Mr. Musenbrock: O.K.

By Mr. Maguire:

Q. The question was that the Northwestern and the Milwaukee surround the M. & St.L. to a greater degree than other carriers in this area?

A. They do.

Q. Now, all of your traffic moving at present to points

which are either through the Twin Cities Gateway—let's take the Twin Cities Gateway first—to points that are common between the M. & St.L. and the Milwaukee and to points beyond the M. & St.L., which, however, are served by the Milwaukee, and also to and from points in eastern and southern territories through the Twin Cities Gateway are now vulnerable to solicitation by the Milwaukee, are they not?

A. And not via the Spokane Gateway.

Q. I am talking about the Twin Cities Gateway.

A. They are vulnerable to solicitation only by the Twin Cities Gateway.

Q. Yes, and then for traffic which is destined to common points in the territory, colored in yellow on Mr. Ehlen's Exhibit No. 28, are you familiar with that?

A. Yes, I am.

Q. Then I won't have to place it before you.

[fol. 3273] That is also vulnerable to solicitation against the M. & St.L. via the Milwaukee through Spokane at the present time, isn't it?

A. Yes, the territory colored in yellow except from a certain segment of the S. P. and S., the Santiam branch.

Q. And regardless of whether the prayer is granted or the proposed action by the S. P. and S., the Great Northern, and the Northern Pacific, or I should say by the S. P. and S., if that proposed action is consummated, the rate from the Santiam branch will also be available to points in that yellow territory, will it not?

A. That is right.

Q. And that will be vulnerable. Then you think that the single route via the Milwaukee from Spokane to common points will be a selling point?

A. Well, I think there are several factors that would be a selling point.

Q. I am talking about that one particular point.

A. That would be one selling point, yes.

Q. And also the fact that the Milwaukee would be able to divert shipments or carry shipments to its connections would also be a selling point?

A. I think it would.

Q. And you believe that the existence of those selling points would be to the disadvantage of your company?

A. That is my studied opinion.

[fol. 3274] Q. Are shippers of freight as vulnerable to selling points or advertising which have no real merit, which have really a glittering surface to it, as, say, for example, passenger traffic, aren't they a pretty prosaic class of practical men who are not going to be led aside by the necessities of their business by mere selling points?

A. I think the selling points have some value attached to them.

Q. In other words, they would be of some benefit to the public?

A. They would give the shipper somewhat broader latitude than he enjoys now.

Q. Yes?

A. Whether that would be of benefit or not I don't know.

Q. But it would not be merely a meritorious selling point, it would be a selling point of substance, in your opinion?

A. Certainly.

Q. Your line solicits lumber business in the Willamette Valley, does it not?

A. Yes.

Q. And I presume by a representative who comes out of your Portland office?

A. Yes.

Q. Portland, Oregon, office?

A. That is correct.

Q. And both the M. & St.L. and the Milwaukee are non-originating lines so far as Willamette Valley or western [fol. 3275] Oregon or any Oregon lumber traffic is concerned, isn't that true?

A. That is true.

Q. And, of course, your originating line, it is also common thought or talk, as the case may be, in railroad circles, your originating line is the one that has the solicitation advantage, isn't it?

A. I think it has a slight advantage, without a doubt.

Q. And so far as our both being non-originating lines we are about in the same boat on solicitation, aren't we?

A. Today we are in the same boat.

Q. And the only reason there would be any advantage is that we would have something to sell which you couldn't sell, that would be the only advantage we'd have?

A. That would be your real advantage, yes.

Q. You talked about a further disadvantage you would have in that there would be some diversion if the Milwaukee had these rates granted to it from the route through the Twin Cities, didn't you?

A. Yes, I did.

Q. And, of course, you already suffer, I presume, a loss of business that you might otherwise get by reason of the Laurel Gateway of the Great Northern and Northern Pacific which diverts traffic from the Twin Cities particularly to the southwest?

A. Oh, any shipment that would by-pass the Twin Cities with traffic would create a loss to our company.

[fol. 3276] Q. I gather, then, that your answer to my question is yes?

A. That is correct.

Mr. Maguire: I believe that is all, Mr. Swanson, thank you.

Mr. Cockrum: I have one question, Mr. Examiner.

Exam. Dishman: All right.

Cross examination.

By Mr. Cockrum:

Q. Mr. Swanson, you have a route from St. Paul and Minneapolis down through Mason City to Oskaloosa and thence over to Peoria?

A. Yes, sir.

Q. That single line of yours is beneficial to shippers who wish to ship through between Peoria and Minneapolis and St. Paul, I guess?

A. I would consider it so.

Q. Would you say that it is more beneficial to shippers than a joint line over the Milwaukee from St. Paul and Minneapolis down to Mason City and thence via the M. & St.L. Peoria?

A. I would say that it would be.

Q. The so-called common points on your Exhibit 66, common with the Milwaukee, do you know if there is a parity of rates between points on the S. P. and S. to those common points?

A. Yes, wherever I have checked the rates they have been the same via both of them.

Q. By either?

A. By either destination carrier.

[fol. 3277] Mr. Cockrum: Thank you.

Mr. Maguire: Mr. Examiner, there is one very brief line of inquiry which I overlooked. I wonder if I might continue at this time?

Exam. Dishman: Yes, sir.

Further cross examination.

By Mr. Maguire:

Q. You understand what is meant by the phrase used in this proceeding, by transit cars, that is, shipments which are shipped unsold and are disposed of in transit?

A. Yes, sir.

Q. That is a large and growing segment of the market in the lumber industry, isn't it?

A. I believe it is growing continually.

Q. And a very substantial one at the present time?

A. Yes.

Q. Is it from your observation and from the experiences of your solicitors, is it necessarily an advantage to a dealer who deals in transit cars to have those cars moved by a single line to a junction or will it be of advantage to him to line up other, as many, carriers as he sees fit to do?

A. Well, that depends on a number of circumstances, Mr. Maguire. I think the advantage stems from the widest outlet at the point of diversion.

Q. Yes, that is one factor, and also there is the factor that he is not in any too great a hurry until the car is [fol. 3278] sold to have it get any place, isn't it?

A. Well, that is recognized at least.

Q. So that a multiple line haul from that situation is an advantage to him rather than a disadvantage, isn't it?

A. No, not in all cases. There may be many instances where a single line route does not supply through service but is interchanged and slowed in route to a considerable extent.

Q. But a multiple route is not a disadvantage to a transit shipper, is it?

A. No.

Mr. Maguire: That is all.

Redirect examination.

By Mr. Musenbrock:

Q. Mr. Swanson, you used the expression in answer to one of Mr. Maguire's questions that an advantage depends upon the widest outlet at point of diversion. What did you mean by that?

A. I mean that where a shipper sells a car in transit that the advantage to him is to get the most potential markets for that car, that he be able to fan out as many directions as possible in its sale.

Q. Would you consider Canton, South Dakota, on the Milwaukee such a very favorable point?

A. I think it would be a very favorable point.

Q. And why?

A. Because it gives them markets in Western Truck [fol. 3279] Line territory, in the east, in the south, and in the southwest.

Q. Mr. Maguire also inquired as to the Laurel Gateway and you answered about routes that by-pass the Twin Cities. You mentioned the Aberdeen route as one of the routes of the Milwaukee. Would that by-pass the Twin Cities to the south and southeast business?

A. They could move traffic via routes that would by-pass the Twin Cities.

Q. Are there any other routes of the Milwaukee where they could by-pass the Twin Cities to the south and southeast, including local Iowa territory?

A. Well, there are any number of routes as depicted on the map of the Milwaukee, included as our Exhibit No.

70, which would permit the traffic via any number of lines of their railroad that would by-pass the Twin City interchange point.

Q. You mentioned in connection with one of your exhibits that Chaska was a junction point with the Milwaukee.

A. That is right.

Q. How far is Chaska from the Twin Cities, or from Minneapolis, rather?

A. It is about 20 miles.

Q. Is that on a by-pass route of the Twin Cities on the Milwaukee Railroad?

A. Yes, the Milwaukee Company operates through Chaska and by-pass the Twin Cities. It does that when it delivers traffic to us at Chaska, for example.

[fol. 3280] Q. That is, the Milwaukee leaves the main line at Coleraine Minnesota, and traverses over towards Farmington and Chaska is on that route?

A. Yes.

Mr. Musenbrock: That is all.

Mr. Maguire: I have nothing further.

Exam. Dishman: The witness is excused.

(Witness excused.)

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

Mr. James: I have distributed three exhibits.

Exam. Dishman: The map will be No. 73.

(Defendant's Exhibit No. 73, Witness Larsen, was marked for identification.)

Exam. Dishman: Now, what is 74?

Mr. James: 74 is a computation made by this witness from the same sources that have previously been discussed covering the Great Northern Railroad.

Exhibit 75 is the same material, that is, the computation made from comparable material from the Northern Pacific Railroad.

(Defendant's Exhibits Nos. 74 and 75, respectively, Witness Larsen, were marked for identification.)

Exam. Dishman: We will now recess for lunch until 2 p.m.

(Whereupon, at 12:30 p.m., a recess was taken until 2:00 p.m. of the same day.)

[fol. 3281] AFTERNOON SESSION 2:00 p.m.

Exam. Dishman: The hearing will be resumed.
Mr. James: I will call Mr. Larsen.

C. E. LARSEN was sworn and testified as follows:

Direct examination.

By Mr. James:

Q. Please state your name, occupation, and position you occupy with the Chicago, Burlington and Quincy Railroad Company.

A. My name is C. E. Larsen, L-a-r-s-e-n. My place of business is 547 West Jackson Boulevard, Chicago 6, Illinois, and I am employed as Assistant Freight Traffic Manager of the Chicago, Burlington and Quincy Railroad Company.

Q. You have been in the Traffic Department of your company how long?

A. I first started with the Railroad in March 1937, in the Traffic Department of the Railroad at Omaha, Nebraska, and all of my employment since that time has been in the Traffic Department.

Q. In Omaha and Chicago?

A. Yes. I worked in the Omaha office in the Traffic Department in various positions of stenographer, secretary, tariff clerk, and freight rate investigator until 1946, when I transferred to Chicago as chief clerk to the Assistant General Freight Traffic Manager. Since that time I have held the position of Office Manager, Chief of Tariff [fol. 3282] Bureau, Assistant General Freight Agent, General Freight Agent, and Assistant Freight Traffic Manager.

Since July of 1952 I have had direct supervision over the Commerce section of the Traffic Department dealing with rail rate and tariff matters, motor carrier, and water carrier and certificate matters.

Q. Are you a practitioner before the Interstate Commerce Commission?

A. I am a Class B practitioner.

Q. Are you familiar with the issues in this proceeding?

A. I am.

Q. And have you attended most of the hearings, including the original Portland hearing?

A. Yes; with the further exception, that I did not attend the second hearing at Portland.

Q. Oh, I had forgotten that. Before we get into the exhibits which have been identified, Mr. Maguire has indicated some complexity and some trepidations over the fact that the Western Trunk lines are in opposition to this proposal of the Milwaukee. I want you to tell the Examiner exactly what it is that your company fears will result from the granting of this complaint or the successful outcome of this complaint on the part of the Milwaukee and the sources, the reasons for it, and the sources of whatever information you have, before we get further into the merits.

[fol. 3283] Mr. Maguire: It is understood, Mr. Examiner, I presume, that the witness is answering the question and not commenting upon counsel's exhibits as to my feelings in the case. Is that correct?

Mr. James: That is quite correct, Mr. Maguire.

Mr. Maguire: O. K.

A. The vast majority of traffic originating on the S. P. and S. system in which the Burlington participated consists of overhead traffic, that is, traffic in which the Burlington participated only as an intermediate carrier. Because the Milwaukee Road, like the Burlington, has principal junction points with which they connect directly with lines serving eastern, southwestern, and southern territories, we are fearful that any diversion of traffic away from the Great Northern and Northern Pacific will likewise result in

a diversion of traffic away from the Burlington Railroad. The Milwaukee, undoubtedly, will solicit traffic for interchange direct with connecting carriers serving these other territories, and in so doing this solicitation effort will completely bypass our operation. This intent on the part of the Milwaukee is sincere, has been made by responsible traffic officials of the Milwaukee Road in—

COLLOQUY BETWEEN EXAMINER AND COUNSEL

Mr. Maguire (interrupting): Pardon the interruption, Mr. Larsen.

I move that all of this answer so far, up to the present interruption of the witness, be stricken as argumentative. [fol. 3284] We are here to learn facts and not an argument as to why the Burlington feels any apprehensions about the granting of the application. All of this so far by this witness has been argumentative entirely.

Exam. Dishman: What are you doing, Mr. James, are you laying the groundwork now for factual statement?

Mr. James: Yes. I want this witness to cover at the outset some of the things about which Mr. Maguire questioned Mr. Christiansen as to what it was he was fearful of. That is the thing, we think, ought to preface the factual testimony of this witness. We want to know what it is he thinks is going to happen, if and when Mr. Maguire's—

Exam. Dishman (interrupting): As a preface to giving his factual testimony?

Mr. James: That is right.

Mr. Maguire: The only thing, Mr. Examiner, if that is the purpose as announced by counsel, a witness, of course, in his answers on cross-examination, has naturally more latitude, if an argumentative question calls for an argumentative answer, for example, he is entitled to give it, but I do not think it is proper, and I object to counsel, his own counsel, on direct examination asking for argumentative answers. Counsel is anticipating what might possibly be asked on cross-examination but that should be left for that time.

The thing I object to is having argumentative statements [fol. 3285] put into the record on direct examination by a

witness which will undoubtedly be relied upon by his counsel as statements of fact.

Mr. James: I am not anticipating and I don't care what Mr. Maguire asks on cross-examination. I believe it is clearly within the bounds of the rules of evidence, and I believe it is required in this case to ask this witness to show what it is that they are fearful of and why and the sources of their information.

Exam. Dishman: We have had enough of that.

As preface to his factual evidence, we will let the statement stand for what it might be worth.

Proceed.

By Mr. James:

Q. Will you proceed now with your answer?

A. I was all ready to say that the intention of the Milwaukee to solicit traffic so as to bypass the Burlington was made quite clear in a printed pamphlet—

Mr. Maguire (interrupting): Just a moment. The printed pamphlet is not in evidence, Mr. Examiner.

Mr. James: If the witness will be permitted to complete his answer then if there is some objection we will try to meet it.

Exam. Dishman: Complete your answer.

Mr. Maguire: The thing as has been said before you can't unring a bell. This witness is getting off onto a discussion of a matter which is not discussion in this case, not part of the record in this case, and we have not relied upon any pamphlet to which the witness has referred.

[fol. 3286] Exam. Dishman: That is not in the record, is it?

Mr. James: That is not in the record.

Exam. Dishman: What do you propose to do?

Mr. James: I am going to ask the witness to direct his attention to a statement made by one of the highest officers of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company with respect to this very issue as to what it is the Milwaukee is attempting to do in this case. I am not going to offer the pamphlet, I am going to ask the witness to read a sentence or two to show exactly what the objective is by

the Traffic Vice President of this railroad issued after this case was started.

Mr. Maguire: He is not offering the pamphlet?

Mr. James: That is right.

Mr. Maguire: But he is offering parts of the pamphlet, which are not in evidence in this case.

Mr. James: If counsel wants to offer the rest of it he may do so or any part of it. I am interested only in the matter that pertains to this particular thing we are talking about now, what it is that the Milwaukee hopes to achieve if this application is granted.

Exam. Dishman: Do you want to offer the pamphlet?

Mr. James: I am not going to offer the pamphlet. I am going to offer two of three statements from Mr. Draver's statement and then counsel is at perfect liberty to put in any more he desires to put in. If Mr. Draver were in this room [fol. 3287] and made these statements it would be regarded for what it is and that is the best positive evidence of what the Milwaukee hopes to accomplish.

Mr. Rockwood suggests it is in the nature of admission by responsible and very thoroughly and experienced traffic officer as to what would happen if this complaint is successful. It is completely relevant and competent.

Mr. Maguire: Do you regard it as an admission against interest, Mr. James?

Mr. James: I am not stating how I—

Mr. Rockwood (interrupting): May I make a remark? There were times when Mr. James was not present when Mr. Maguire stressed with certain witnesses, his own witnesses, the fact that the Milwaukee intended to leave all routes open via Minnesota Transfer so that all carriers could participate and attempted to lay the foundation for an inference from the Commission that the Milwaukee had no intentions whatsoever of participating in the traffic east of Minnesota Transfer to any extent greater than they participate in traffic at the present time via the Great Northern and Northern Pacific. That was positive evidence. This is perfectly competent as rebuttal to the testimony that Mr. Maguire put in. I cannot cite the transcript where that occurred because I did not anticipate that this issue would have arisen.

Mr. Maguire: Now, I think that counsel has misled himself upon that, because I don't mind stating for the record [fol. 3288] here—I will read in the precise remarks made by Vice President Draver on the witness stand in this case.

Mr. Rockwood: No, no, wait a minute, Mr. Maguire.

Mr. Maguire: Your statement was not correct, because Mr. Draver said this—

Mr. Rockwood (interrupting): I am not referring to the testimony of Mr. Draver, I am referring to the testimony of Mr. Hugo Engel at places in his testimony and the testimony you elicited on direct examination from some of your shipper witnesses.

Mr. Maguire: Yes, certainly.

Mr. Rockwood: And we can rebut that.

Mr. Maguire: The shipper witnesses, so far as that part of it is concerned have no control whatever over the policies of the Milwaukee. If counsel wishes to, and so long as this argumentative statement has been admitted into the record, Mr. Draver testified, and if I may have just a moment I will find the pages of the record and will read his testimony, the fact that we would solicit business through to Chicago but that our success in obtaining it was rather dubious. There is no question but what Mr. Draver testified that we would solicit business to Chicago.

Exam. Dishman: That is in the record. I remember that so it is not necessary.

Mr. Maguire: So there is no testimony to refer—

Exam. Dishman (interrupting): No, it is not necessary [fol. 3289] to refer back to his testimony.

Mr. Maguire: No.

Exam. Dishman: You weren't referring to Mr. Draver's testimony?

Mr. James: Not at all.

What I was seeking to do is to ask this witness to indicate what Mr. Draver said the Milwaukee hoped to accomplish in a widely circulated pamphlet printed by him or by the Milwaukee a while after this case was started.

Mr. Maguire: Does this witness know that that was a widely circulated pamphlet?

Mr. James: I haven't asked the witness yet.

By Mr. James:

Q. Mr. Larsen, do you know who Mr. P. H. Draver is?

A. Yes, he is Vice President of Traffic of the Chicago, Milwaukee Road.

Q. And he is the Milwaukee's representative, is he, on the executive committee of the Western Traffic Association and speaks for his Milwaukee Railroad in that association?

Mr. Maguire: That is objected to as a leading question.

Exam. Dishman: Does the witness know?

A. Yes, he is.

By Mr. James:

Q. Has Mr. Draver been Traffic Vice President since before this case was started, this complaint filed by these gentlemen?

[fol. 3290] A. Yes, sir.

Q. And he is, to your knowledge, a thoroughly experienced and competent traffic officer?

Mr. Maguire: Now, just a minute.

Mr. James: Now, I don't think—

Mr. Maguire (interrupting): Now, let me state my objection, and quit hollering at me, please.

Mr. James: I didn't mean to holler at you.

Mr. Maguire: Counsel is asking this witness to qualify some officer—just stop interrupting if you don't mind—to qualify an officer of another railroad.

Mr. James: We all know that he is a man of fine standings all of us.

The Witness: His office is right across the street from ours.

Mr. Maguire: I will let that stand.

Exam. Dishman: Give your opinion.

Mr. James: I want him to get into this record a sentence or two of what Mr. Draver has said the objective was, and I think it is completey—of course, if Mr. Maguire objected on the ground that wasn't an authentic document that would be an entirely different thing but I don't understand he is doing that.

Exam. Dishman: Go ahead and proceed.

By Mr. James:

Q. Go ahead and read a sentence or two and show it to Mr. Maguire.

[fol. 3291] Mr. Maguire: May it be understood that my objection runs to this entire line of testimony.

Exam. Dishman: Identify the publication.

A. One of the objectives of this case which was brought out in the pamphlet by Mr. P. H. Draver—

By Mr. James (Interrupting):

Q. Read the title of it, if you will.

A. (Continuing) —Vice President, Traffic, Milwaukee Road, with a caption "An explanation of the issues involved in Chicago, Milwaukee, St. Paul and Pacific Railroad Company v. Spokane, Portland and Seattle Railway Company, Oregon Electric Railway Company and Oregon Trunk Railway. (I.C.C. Docket No. 31466).

The following appears on the third printed sheet of this pamphlet—

Q. (Interrupting) Is the sheet numbered?

A. (Continuing) —and the paragraph which I will read is numbered 6.

I am quoting: "It will be possible to handle traffic from, to and via Milwaukee territory in the Midwest by two lines (Milwaukee-SP&S direct) instead of three under existing tariffs, with the obvious economical advantages inherent in such two-line operation. Under the existing rate structure, a shipment from Chicago, for example, must be turned over by the Milwaukee to the GN or NP as intermediate carrier between Minnesota Transfer and Spokane."

[fol. 3292] Exam. Dishman: Did you identify the pamphlet and the date of it?

The Witness: The pamphlet bears no date but it is a pamphlet entitled "The Spokane Gateway Case" and I quoted the phraseology on the outside of the pamphlet.

By Mr. James:

Q. Does Mr. Draver's name appear on the pamphlet?

A. Mr. Draver's name appears on the outside or on the first page of the pamphlet and again on the last printed page of the pamphlet, the next to the last printed page of the pamphlet.

Q. Now, will you turn to the second page, please, under the heading of "The Proposed Joint Rates and Through Routes Will Be In The Public Interest" and read what Mr. Draver says about the objective there, numbered 1, 2, and 3? Read, please, the opening paragraph under that heading that I mentioned, beginning with "The proposed rates and routes" and then skip to paragraph numbered 6 at the bottom of the following page.

A. The preface for paragraph 6 of the pamphlet which I read reads as follows:

"The proposed rates and routes, if granted, will serve the public interest in the following particulars."

This is followed by a number of designated points, and I read point 6 under this caption.

Q. That is all. I mean that is all on this point.

Exam. Dishman: Off the record.

(Discussion off the record.)

[fol. 3293] Exam. Dishman: On the record.

By Mr. James:

Q. Now let's turn to your exhibits. The first exhibit is the map identified as Exhibit 73.

Mr. James: These have been distributed, Mr. Examiner, I am sure you have one.

Exam. Dishman: Yes.

By Mr. James:

Q. That map purports to have been issued by the C. B. and Q. Railroad Company, and it shows not only the lines of that railroad but I think of all the railroads interested in

this proceeding. Please describe that map, indicating what slight changes have been made to emphasize certain lines.

A. Exhibit 73 is the Burlington wall map outlining all railroads serving that part of the United States lying generally west of a point north and south just east of Chicago. The only alteration that has been made in this map from its usual printed form is that the Milwaukee Road, which is normally colored in yellow on the map, has been emphasized with a heavier yellow line, and the S. P. and S. System which is normally shown in purple has been emphasized with a heavier purple line. This map, in addition, in its customary form shows the Chicago, Burlington and Quincy Railroad in heavy black lines on the map. The Great Northern Railway is shown, I believe, in red, and the Northern Pacific Railway is shown in heavy green line. The map also shows our principal interchange points with the Great Northern and Northern Pacific, these being Billings [fol. 3294] and Laurel, Montana, with both the Great Northern and Northern Pacific, the Twin Cities in Minnesota with both the Great Northern and Northern Pacific, and Sioux City, Iowa, with the Great Northern Railway.

Q. Are those all the junctions between these roads?

A. They are.

Q. And are there facilities at each of the points you have named for interchange of traffic?

A. Yes.

Q. I think this is already in the record: does the Burlington have direct connections as distinguished from the use of Minnesota Transfer as a junction point?

A. They do.

Q. Now turn, if you will, to Exhibit 74, consisting of two mimeographed sheets, and tell us what that is.

A. Exhibit 74, consisting of two pages, covers traffic interchanged with the Great Northern for the year 1953. Page 1, line 11, in the lower right-hand column shows that we handled 9,181 cars and received revenue of $1,696,281.75.

Q. May I interrupt, Mr. Larsen. All the data which you have used in the compilation of this exhibit and the following exhibit were taken from cards supplied you by the two Northern lines, as has already been testified to?

A. That is correct.

Q. Go ahead.

A. Page 2 is an analysis of page 1 showing the amount of [fol. 3295] traffic which in my judgment is competitive with the Milwaukee Road and subject to diversion, period.

Q. Suppose you describe the Exhibit 75, if you will, and then we will ask you how you arrived at those—

A. (Interrupting) Exhibit 75 shows the same type of information in connection with traffic interchanged with the Northern Pacific Railway Company. The difference between the two exhibits is that for the Great Northern, in Exhibit 74, a full year's study is shown, whereas in Exhibit 75 the months of February, May, August, and November 1953, were used. This exhibit shows that in the four-month period we interchanged 2,957 cars with the Northern Pacific, having gross freight revenue to the C. B. and Q. of $565,671.58.

Q. I suppose with respect to both of your exhibits you used the same method of determining what in your judgment, what traffic in your judgment, would be vulnerable to diversion and all that?

A. Yes, I did.

Q. Now go ahead and explain just what your—

A. (Interrupting) In analyzing the cards that were furnished to me by the accounting departments of the two Northern lines, page 2 of each exhibit you will note I eliminated all traffic which either originated or terminated at a C. B. and Q. point not served by the Milwaukee Road. That traffic naturally was eliminated for the reason that even though the Milwaukee should prevail in this case it [fol. 3296] does not necessarily follow that we would lose the traffic. We could expect to retain that traffic with some possible lessening of revenue because of short hauling.

Then in analyzing the cards a little bit further there was some traffic which, although I consider it to be strictly competitive under the tariff, it did not, in my judgment, represent traffic which would likely be diverted if the Milwaukee should prevail, and I have taken that traffic out of my study simply so as to make my estimate of the traffic subject to diversion as conservative as possible.

Q. Just briefly, what type of traffic was that, that you excluded?

A. There were some cards that I went through that I couldn't recite in detail, but I do recall some traffic which moved to and from points in the Southwest that had origin and destination at points on the Fort Worth and Denver Railway which moved through Laurel and Denver which I considered not too likely subject to diversion, and the other class of traffic was some transit shipments that didn't amount to much but I still eliminated them from the study.

Q. What further explanation do you feel that these two exhibits require to be fully understandable?

A. I might indicate for the record that the total of sheets 2 of each exhibit results in a total figure of $2,725,959.54 and total carloads of 15,704 that are competitive with the [fol. 3297] Milwaukee Railroad and which would be subject to diversion should the Milwaukee prevail in these proceedings.

Q. Is there any traffic in your judgment not shown at all in this proceeding, in these exhibits which might be affected adversely to the company's interest if this application were granted, or complaint?

A. As I said, there is some traffic shown on page 1 of both exhibits which originated or terminated at points not served by the Milwaukee on which we would stand to receive lesser earnings if the Milwaukee should prevail in this case than we received on the traffic as it moved. To give you an example, the Milwaukee Road does not serve St. Louis and there was some traffic that both originated and terminated at St. Louis. We either received the traffic at Laurel or the Twin Cities. If the Milwaukee should prevail in this case, and they were successful in diverting any of this traffic away from the G. N. and the N. P., it is unlikely that we would receive the traffic at those junctions but instead might receive it at a junction nearer the origin or destination of St. Louis, such as East Missouri Line.

Q. Illinois?

A. East Missouri Line, Illinois. In such case our earnings would be reduced very sharply below those which we obtained on traffic interchanged at Laurel, and we would receive less than half as much revenue even on the traffic which is interchanged at the Twin Cities.

[fol. 3298] Q. Laurel, I think you said, is in Montana?

A. Yes.

Q. So that your line receives a very long haul of traffic bound to or from eastern, or destinations in Iowa, or Illinois?

A. That is correct.

Q. Do you have any further comment on either of these or both of these exhibits, Mr. Larsen?

A. I think not.

Q. I think I will ask you this, have you attempted to form any sort of a conclusion, reach any sort of a conclusion, about the extent of the traffic or the extent of the traffic and revenue your company might lose if these things happen that you have told us about, this diversion of traffic? Can you give us an opinion on that subject?

A. Earlier in this proceeding Mr. Finley of the Great Northern testified as to a probable one-third diversion of traffic away from the Great Northern. In my opinion for the reasons which I have stated earlier as to the Milwaukee Road's operation to and from other territories on overhead traffic, we would stand to suffer a diversion of at least that much traffic and possibly even more because of the short-hauling feature which I just mentioned a moment ago.

Q. That is, you would suffer in car miles and in revenue?

A. Yes, sir. Applied to the figures that are shown on pages 2 of my exhibits 74 and 75, if a one-third diversion [fol. 3299] resulted, we would stand to suffer a traffic decline of 2,500 cars with revenue of $439,912.59 with the Northern Pacific and 2,735 cars with revenue of $468,740.59 with the Great Northern. This would produce a grand total loss to the Burlington of 5,235 cars and revenue of $908,-653.18.

Q. Annually?

A. Annually.

Q. For both, with respect to both lines, both the Northern lines?

A. That is correct.

Mr. James: Your witness.

Cross examination.

By Mr. Maguire:

Q. Mr. Larsen, I notice your estimate goes right down to the 59 cents for each of the lines' business you get, doesn't it?

Mr. James: I think we would settle for 57.

A. I will knock off the cents.

By Mr. Maguire:

Q. You want to round that off, all right.

I notice that your Exhibit No. 75, the first page, and I don't recall that you explained it, but I assume that what has been done you have used the actual four months' figures covered by the cards furnished you by the Northern Pacific in the first sheet of Exhibit 75?

A. That is correct. That is the actual figures on sheet one of Exhibit 75.

Q. Then to correlate that exhibit with the second page [fol. 3300] what you would do would be to multiply by three, I presume?

A. Line four indicates that the estimated total there is the four months' total times three.

Q. Line four?

A. Yes.

Q. Oh, yes. And so if you wanted to bring any of the figures shown on the first page of Exhibit 75 to an annual basis you would just multiply any of those figures, regardless of whether it is cars or revenue, by three to obtain the yearly figure?

A. Yes, I could have projected the four months' study to a year's study by another line there, which would be three times line 11.

Q. Did you make any separations, that is, so far as you were concerned, or have a separation made, between the volume of business which you receive at the Twin City Gateway as compared with what you receive at the Laurel Gateway?

A. No, I didn't. When I was sorting these cards I had, as you can see from the exhibit, about 15 segregations all ready to make, 12 to 15, and it got a little complicated so I didn't make any further divisions.

Q. From your experience and general information could you give us any estimate as to about what proportion of the business originating or terminating on the S. P. and S. System moves through the Laurel Gateway?

A. I wouldn't even have a good guess on all of this traffic. I might have had a better opinion about it if I had [fol. 3301] also gone into another segregation and sorted this traffic according to Official, Southern, and Southwestern Territories.

Q. Well, if you didn't that is all I wanted to know. Now, as to your estimate of losing at least one-third of your present revenues if the prayer of the Milwaukee complaint is granted, I'd like to ask you some questions in connection with that. Your company maintains an office and solicitation forces at certain points on the S. P. and S. System, does it not?

A. Yes, sir.

Q. For example, you have an office at Eugene, Oregon, don't you?

A. Yes, sir.

Q. How many people do you have in that office?

A. Oh, I couldn't say exactly. There are at least two people in the office.

Q. And that office is kept open not only for solicitation but also for inquiries, for tracing of cars, and all other services incidental to movement of shipments of that sort, isn't that true?

A. It is the usual traffic office.

Q. Yes. And my statement about it is correct, as to what you do there?

A. Yes.

Q. Now, you have based your apprehensions as to possible loss of traffic and partly from the language which you quoted from this circular, don't you?

A. The circular—

[fol. 3302] Q. (Interrupting) I said you base your apprehensions in part upon that language that you quoted.

A. Not necessarily; no.

Q. You have had an opportunity to examine the transcript of the original hearing in Portland, have you not?

A. Yes, sir.

Q. Do you recall reading this testimony given by Mr. Draver, and I am starting on page 74 of the transcript:

"Q. With regard to the solicitation of business to and from the area served by the lines of the S. P. and S. System would you tell what our policy would be if this complaint were granted?

"A. Well, we naturally would be expected to solicit any traffic that was available by any route in which we might participate.

"Q. So far as solicitation is concerned in the area served by the S. P. and S. System to other carriers serving Western Trunk Line Territory, which is the furthest of the Eastern Gateways described at length, do they have active solicitation forces on the West Coast, and particularly you will include, I should say, S. P. and S. Territory?

"A. They certainly have.

"Q. And from your observation of advantage in solicitation would our solicitation force in S. P. and S. Territory be of any advantage over other Western Trunk Line carriers?

"A. I doubt it. We wouldn't be original carrier, we [fol. 3303] would have no control over the business."

Mr. James: May I ask, who are you quoting, Mr. Maguire?

Mr. Maguire: As I have said, Mr. Draver's testimony.

Mr. James: Thank you.

By Mr. Maguire:

Q. That is on pages 74 and 75 of the transcript of testimony in this case.

Now, in arriving at your present state of apprehension, you recalled, did you, that present testimony?

A. Yes, I recall reading that.

Q. Do you agree that the originating carrier has the advantage so far as solicitation is concerned in any territory?

A. I think probably there are some advantages that would accrue to an originating carrier. However, I would go one step farther and say that from the testimony that I have read in this proceeding of the Portland hearing, there was some testimony by certain shippers indicating that they would expect some benefits in car supply and other avenues to accrue by reason of the Milwaukee being closer to that originating carrier than somebody like the Burlington.

Q. And you also recall testimony of witnesses at the Portland hearing to the effect that so far as their routing east of the Transfer is concerned, that is on eastbound traffic, beyond the Transfer, Minnesota Transfer, that they would not change their present practice of routing, do you recall reading that testimony, too?

[fol. 3304] A. Yes, but my traffic experience would lead me to believe that that is some of the traffic that the Milwaukee would actively solicit by its long-haul junctions to connections with carriers serving other territories that we don't reach and which would merit the complete bypassing of the Burlington.

Q. In other words, you don't really believe those witnesses really meant it when they said that?

A. I didn't say that. I said the Milwaukee would be very aggressive in soliciting for the elimination of routing that way.

Q. The final decision as to how traffic shall be routed rests with the shipping public, either the shipper or the consignee of shipments, doesn't it?

A. That is generally true, yes.

Q. And it is your fear that if these rates and routes were permitted, that the shipping public would be inclined to utilize them to the extent of depriving you of at least one-third of your present business, is that correct?

A. Yes, that is true.

Mr. Maguire: Thank you, Mr. Larsen, that is all—wait a minute.

By Mr. Maguire:

Q. There is just one general question I wish to ask you about Exhibits 74 and 75. You just compiled these figures

from the cards that were given you by the Great Northern and the Northern Pacific and which were described in the testimony of Messrs. Lear and Webb, without making any [fol. 3305] different classifications in the cards themselves than were already on the cards, is that correct?

A. I don't understand what you mean by making different classifications.

Q. In other words, you did not—these cards were already made out and punched, as I understand it, as described for sorting, automatic sorting, by Messrs. Lear and Webb. Did you put any additional punches in them for further classification or different classification?

A. The cards that were furnished to me had all handwritten information on them, and the classifications in which I placed these cards after I got them were materially different than the order, shall we say, in which I received them.

Q. What you had there was, for example, the Burlington, you had the destination, the final destination? In other words, you determined whether the destinations were competitive with the Burlington, is that right?

A. Yes.

Q. And that was not indicated on the cards at the time?

A. All the classifications here are my judgment applied to every one of these cards personally.

Q. Yes, as to where those shipments covered by those particular cars into what classification they would fall, but you didn't go behind those cards to test their correctness or anything of the sort, did you?

[fol. 3306] A. The information on those cards taken from the interline abstracts was exactly the same as I would have taken had I gone to our interline abstracts and taken the same information off.

Q. But you did not go and make a complete examination of your abstracts to see whether any cards which should have been included were omitted from those handed to you or whether any were included which should have been omitted, you didn't go to that extent, did you?

A. We didn't do it particularly because we were an intermediate carrier on so much of this traffic, and it would have been a much more tremendous job for us to try to pick out

all of these cards, or all of this information from our interline abstracts.

Q. Understand, Mr. Larsen, I am not criticizing, I just want to find out one fact, and that is you took this information as given to you by the Great Northern and the Northern Pacific, and then you made your own classifications and worked it up?

A. That is true, and we consider this a much more reliable study than if we had done it all ourselves.

Mr. Maguire: I ask, Mr. Examiner, that the last remark of the witness be stricken as not responsive.

Mr. James: I think it is perfectly proper.

Exam. Dishman: He asked just for the direct answer so that may be stricken.

Mr. Maguire: That is all I have. Thank you.

Exam. Dishman: Do you have anything more, Mr. James?

[fol. 3307] OFFERS IN EVIDENCE

Mr. James: I offer in evidence Exhibits 73, 74, and 75.

Mr. Maguire: No objection.

Exam. Dishman: Exhibits 73, 74, and 75 are received in evidence.

(Defendant's Exhibits Nos. 73, 74, and 75, Witness Larsen, were received in evidence.)

Exam. Dishman: The witness is excused.

(Witness excused.)

[fol. 3308] Mr. Rockwood: I will recall Mr. Ehlen.

GEORGE F. EHLEN was sworn and testified as follows:

Direct examination.

By Mr. Rockwood:

Q. Mr. Ehlen, you have been previously sworn and you have previously testified in this case, have you not?

A. I have.

Q. You testified in the hearing in Portland, Oregon, in February of this year?

A. Yes, sir.

Q. The first thing I want to do, Mr. Ehlen, at page 1889 of the transcript, you testified with respect to instructions then in the course of preparation to North Pacific Coast Freight Bureau for the establishment of certain rates. You recall that discussion?

A. Yes, sir.

Q. Can you tell us what has happened with respect to those rates since that time?

A. Instructions have been issued to Mr. Watson; agent of the North Pacific Coast Freight Bureau to publicize the publication of rates on forest products from all S. P. & S. System points to the territory between Mobridge, South Dakota, and Spokane.

Mr. Rockwood: I have distributed a two-page mimeographed exhibit on green paper headed "North Pacific [fol. 3309] Coast Freight Bureau". May I have it marked for identification?

Exam. Dishman: That will be identified as Exhibit No. 76.

(Defendant's Exhibit No. 76, Witness Ehlen, was marked for identification.)

By Mr. Rockwood:

Q. Do you have a copy now before you, Mr. Ehlen, of Exhibit 76?

A. Yes, I have.

Q. Will you tell us what this is and how it is related to the testimony you have just given with respect to these instructions?

A. These instructions were issued, as testified in the Portland hearing, that we would assemble the data and submit it to the North Pacific Coast Freight Bureau for processing.

My letter of March 8, 1955, to Mr. Watson covers the proposal. We found some added information that was necessary, which was submitted to Mr. Watson on March

17. This proposal was publicized in the regular course under the Western Traffic Association agreement, on March 19, 1955, it was eligible for consideration on April 2, 1955. As I understand it, the proposal is now before the North Pacific Coast Freight Bureau committee in Seattle and will be considered at its meeting this week.

Q. Just so the record will be clear, in very general terms, what was this proposal, what did it relate to, rates on what, from where to where?

[fol. 3310] A. The proposal relates to rates on forest products from all S. P. & S. System points to all points located on the Milwaukee road between Mobridge, South Dakota, and Spokane, Washington.

Q. Have you, Mr. Ehlen, prepared a map of the S. P. & S. System which is on a scale somewhat larger than has been shown on any exhibit heretofore put in the case?

A. I have.

Exam. Dishman: That will be identified as Exhibit No. 77.

(Defendant's Exhibit No. 77, Witness Ehlen, was marked for identification.)

By Mr. Rockwood:

Q. Is this map which has been identified as Exhibit No. 77 the one you referred to?

A. Yes, sir.

Q. Will you please give us any comments that you think should be made on this map without unnecessary duplication of material which is already in the record?

A. I had this map prepared to show the lines of the S. P. & S. on a larger scale than is shown on any of the other maps already in the record.

The S. P. & S. proper includes the main line from Spokane westbound to Portland and extending beyond Portland along the south bank of the Columbia River to the terminus at Seaside.

The S. P. & S. proper also includes the branch which leaves the main line just west of Portland and extends through to Vernonia to Keasey.

[fol. 3311] The Oregon Trunk is a line extending from Wishram on the north bank of the Columbia River in Klickitat County, Washington, southward along the canyon of the Deschutes River to Bend, Oregon.

The Oregon Electric proper commences at Bowers Junction on the Vernonia branch of the S. P. & S. and extends southward in the Willamette Valley of Oregon to Eugene.

The Oregon Electric branch, which has been frequently referred to in the record as the Santiam branch, extends from Albany in Linn County easterly to Foster and Dollar.

COLLOQUY BETWEEN EXAMINER AND COUNSEL

Mr. Maguire: May I interrupt you just a moment, Mr. Ehlen.

I notice that Mr. Ehlen is reading from prepared explanations, are there copies for counsel?

Mr. Rockwood: As a matter of fact, Mr. Maguire, Mr. Ehlen does not have a prepared statement. We have rather extensive notes and sometimes he will refer to a paragraph or two of those notes and read from it but it is not put together. I am sorry, I wish it were.

Mr. Maguire: I would just like to ask this, I may not find it necessary to use them, but it will be a great help to me if I can look over Mr. Ehlen's notes while I am cross-examining him, would you have any objection to that?

Mr. Rockwood: Yes, as a matter of fact, there is a lot of material on those he will not refer to and use.

Mr. Maguire: You know, if people refer to notes op-[fol. 3312] posing counsel is entitled to examine the notes, take the notes just as they are. I was going to ask for this in an amicable manner. If counsel is not going to let me have it, then I am going to demand it.

Exam. Dishman: What do you have to say about it?

Mr. Rockwood: In some proceedings before the Commissioner, if the Examiner please, statements have been prepared. The pressure of preparation has been such that we were not able to do that for Mr. Ehlen. We have for some other witnesses, and where such statements have been prepared they have been made available. But the statements from which Mr. Ehlen will testify are work sheets, arithmetical computations and a lot of other things,

and I don't think we should be called upon to make them available. I do recall that I specifically asked for work sheets with respect to one Milwaukee exhibit and they were declined with the comment that the information was available in our own files and we were not given the information.

Mr. Maguire: The reason you were not given it was that they weren't all work sheets as such, they were merely totals taken off the abstracts, if you will read that letter. But the fact remains that this witness has before him certain memoranda from which he is testifying, and I think it is fundamental that when a witness is testifying from memoranda that opposing counsel is entitled to examine the memoranda from which the witness is refreshing his memory.

Mr. Rockwood: Mr. Maguire, I have generally copies of [fol. 3313] these, and to the extent that they are available I will hand you mine after I finish my direct examination.

Mr. Maguire: No, since this question has arisen in just this matter I would like to look at the memoranda from which the witness is testifying, not from what anybody else has in his possession.

Exam. Dishman: Let's continue with direct examination. Let's get this direction examination over.

You are not asking for it until on cross-examination, anyway, are you? He doesn't have a copy available.

Mr. Maguire: I will wish to have a copy before cross-examination. I may not use it at all. Whereas I am just refused to have an opportunity to look at it then I am going to be forced to demand it.

Exam. Dishman: Let's continue with direct examination until we reach that point.

By Mr. Rockwood:

Q. Will you proceed with your explanation in reference to this map, Mr. Ehlen.

A. I would like to point out on this map that the territory between Lyle, Washington, on the west and Spokane, Washington, on the east, that in that particular territory there is not one single sawmill operation. When you get east of the Cascade range of mountains, in that particular territory, there is no timber. It is a sparsely settled terri-

tory. The transcontinental traffic to and from that territory [fol. 3314] is practically nil, except at times when the government builds dams across the Columbia River, we are at times fortunate in participating in the traffic provided the contractors is set up on our side of the river, and we are unfortunate when they set up on the Union Pacific or south bank side of the river.

In that territory the preponderance of the tonnage is grain, which moves to Coast ports, such as Vancouver, Portland, Terminal 4, which is in the switching district of Portland, and Astoria, and some of the grain which originates between Pasco and Spokane moves to Puget Sound.

The station of Kennewick, last year we handled one carload of freight, and before I left our general manager asked that we progress the closing of that station through the Public Service Commission of Washington.

Q. How large a town is Kennewick?

A. Kennewick proper is about—it is just a guess—around 14,000, but our station is on a bank, or on a fill, approaching the Columbia River bridge. We have a team track that will hold two cars. We serve no industries at Kennewick whatsoever. The town of Kennewick proper is served by the Northern Pacific and the Union Pacific.

I would like to explain the territory from Wishram, Washington, south to Bend. That is the territory served by the Oregon Trunk Railroad in common with the Union Pacific. That entire territory is competitive with the Union Pacific.

[fol. 3315] The territory from Portland to the Pacific Coast, Seaside being the end of the line, is a territory that is not productive other than from fish canneries at Astoria. In the 1920's that was a very productive lumber territory. The timber is culled out. We have some sawmills left. They are located at Westport, Clatskanie, Bradwood. There is a plywood plant at Astoria, a sawmill at St. Helens, a small sawmill at Prescott and a few others in-between. But the larger sawmills produce lumber for export and there is very little rail traffic involved.

The so-called Keasey Branch is 58 miles long and extends in a northwesterly direction. Vernonia is the main produc-

ing point, at which point the Long-Bell Lumber Company has a sawmill. Other than the sawmill the traffic on that portion of our line is practically nil, except at North Plains, Oregon, at which point there is some lumber traffic and a feed and grain elevator.

Q. Before you leave the Keasey Branch, how many carloads a year originate at that Long-Bell mill?

A. Approximately 2,000 carloads per year.

Q. Do you personally, personally, have information as to the quantity of timber still available and tributary to that mill?

A. There is approximately one hundred fourteen to one hundred twenty million feet of timber still available to that mill. In addition to that the Ruth Realty Company owns [fol. 3316] approximately sixty million feet, which has been committed to the Long-Bell Lumber Company. The sale of that timber is now in process.

In the past that mill has cut, according to market conditions, between sixty and seventy-five million feet per annum.

Q. Based on the information you have, what is the prospective life of that mill?

A. Two to three years.

Q. And will that exhaust the timber available to the mill?

A. It will.

Q. After the timber tributary to that Long-Bell mill at Vernonia is cut out, what will happen to the Keasey Branch?

A. The ultimate is that we will have to file an application with the Commission, as I see it, to abandon that portion of the line because the traffic involved will not support it. There is no other traffic in that area, except there is a shale deposit, and that produces some carload traffic a certain portion of the year, the revenue is very low, and it certainly would not justify the S. P. & S. to maintain the line beyond, at least beyond, North Plains.

Q. You are going to leave the Keasey Branch and describe another portion of the system, will you proceed, please.

Exam. Dishman: First, what is the mileage of this branch?

The Witness: Fifty-eight miles, Mr. Examiner.

Exam. Dishman: From Portland?

The Witness: From Portland to the end of the branch at [fol. 3317] Keasey.

Exam. Dishman: And how far beyond North Plains?

The Witness: I can give it to you in just a moment, sir.

Exam. Dishman: That is about halfway, isn't it?

The Witness: North Plains is not quite halfway, I don't think. Keasey is 57 miles from Portland, North Plains is 29.9 miles from Portland.

Exam. Dishman: That is close enough.

Mr. Maguire: May I ask a question for clarification at this point?

Exam. Dishman: All right.

Mr. Maguire: You may have stated it, but I don't recall it, Mr. Ehlen, where does the Keasey Branch take off from the main line?

The Witness: The Keasey Branch takes off the main line towards Astoria just, well, it continues on to a place near Holbrook, if you will look, just beyond Linton.

Mr. Maguire: Does it take off at United Junction, as shown on this map?

The Witness: Well, yes, United Junction would be the take-off.

Mr. Maguire: But the distances were from Portland that you show?

The Witness: Yes, we would have to deduct that United mileage from Portland to come out with the exact mileage.

[fol. 3318] Mr. Maguire: I see.

By Mr. Rockwood:

Q. Proceed with your description of the S. P. & S. territory as shown by this map.

A. Now, the Oregon Electric portion of the railroad that takes off at River Junction or United Junction, that point in there, extends to Eugene. That entire territory is competitive with the Southern Pacific along with the Forest Grove Branch. You will note that the Forest Grove Branch extends from Forest Grove Junction. All of the important

points on the Oregon Electric main line and Forest Grove Branch are competitive with the Southern Pacific.

The Foster or Dollar Branch takes off at Albany. From Albany to Lebanon, that portion of the line is owned by the Southern Pacific, over which the Oregon Electric has contract rights to operate, and from Lebanon to Foster and Sweet Home that is strictly an Oregon Electric owned line.

The point called Weldwood is reached by the Southern Pacific through a traffic agreement, that is, they reach the Cascade Plywood Plant, and that traffic is available to the Southern Pacific.

Q. Is Weldwood the Cascade station for plywood?

A. Yes, sir.

Q. That is the plant that Mr. Hancock described as located at Lebanon?

A. Yes, sir.

[fol. 3319] Q. Will you tell us, please, Mr. Ehlen, what your practice as traffic manager of the S. P. & S. is with respect to changes in rates in making of new rates in which the S. P. & S. concurs?

A. The S. P. & S. traffic department takes no action with respect to changes in rates without the approval of the traffic officials of the Great Northern and Northern Pacific. By this I do not mean to say that in every instance the S. P. & S. gets specific approval from its parent lines prior to taking of action by S. P. & S. officials in Portland. The parent lines through the years have approved practices by the S. P. & S. which will apply and follow so that it is not necessary to go to the parent line in every specific case.

Q. In the processes of rate making do the S. P. & S. rates and tariff provisions fall into any general categories in which different procedures are followed?

A. Yes. There are three general categories, as follows: One, the rates and practices relating solely to S. P. & S. local territory; two, rates and practices on traffic other than transcontinental traffic, relating to traffic handled jointly with other carriers; and three, rates and practices relating to transcontinental traffic.

Q. Will you please describe your practice with respect to the first category, that is, rates local to the S. P. & S.?

A. With respect to local rates applying only between points local to the S. P. & S. System, the S. P. & S. without [fol. 3320] specific approval in advance from the parent lines dockets the proposed changes on the North Pacific Coast Freight Bureau docket and the matter is handled in regular course on that docket. There are two broad exceptions to this general practice with respect to local rates.

The first exception relates to intrastate rates on logs and fuel wood, also covers pulpwood chips between points in Oregon on the Oregon Electric and between points in Oregon on the S. P. & S. line west of Willbridge extending to Seaside, including the Keasey Branch.

The changes in rates on these commodities are numerous. In many cases it is essential that they be made promptly—

Mr. Maguire: May be made what?

The Witness: Promptly.

A. (Continuing) —promptly without the delay which would be necessary if they were handled on the North Pacific Coast Freight Bureau docket. In many cases we publish these rates without docketing and frequently upon less than statutory notice with permission of the Oregon Public Utilities Commission.

The second exception relates to rates which, though local to the S. P. & S., may have an effect on rates of other carriers on the same commodity in the same general territory, thus a rate on petroleum products between local points on the S. P. & S. may have an indirect effect on rates of other [fol. 3321] carriers in the states of Oregon, Washington, Idaho, and Montana, in such cases the S. P. & S. does not place a change on the docket without prior consultation with the traffic officials of the Great Northern and Northern Pacific and will not place changes on the docket without the approval in advance of those carriers.

Q. Now will you please describe your practices with respect to your second category, that is, traffic other than transcontinental traffic handled jointly with other carriers.

A. Rates of this category are handled regularly on the North Coast docket. At the docket meetings, if a proposal

is opposed by representatives of both the parent lines, the S. P. & S. representative does not undertake to exercise his own independent judgment, but follows the lead of the parent line representatives. The rule of the North Pacific Coast Freight Bureau, freight traffic committee, in accordance with the Western Traffic agreement is that the majority vote on any matter controls. There are instances where the representative of the Northern Pacific will vote one way and the representative of the Great Northern the other, and in such cases the S. P. & S. representative exercises his best judgment. This practice is followed by our representative with the approval of the two parent lines. I know of no instance where one of the parent lines directed us to vote in a manner opposed to the vote of the other parent line.

Q. What is your practice with respect to the third cate- [fol. 3322] gory, that is, transcontinental rates?

A. The S. P. & S. traffic department does not participate in any way in the disposition of rate matters relating to transcontinental traffic to or from S. P. & S. System points. The S. P. & S. is a member of the Transcontinental Freight Bureau under article VI, Section 2 of the Western Traffic agreement. We may submit proposals to the chairman of the Transcontinental Freight Bureau under Article VI, Section 9(a) of the agreement. Although we have in the past submitted matters to the Transcontinental Freight Bureau direct, however, we usually pass the proposals along to our parent lines, who submit them to the Transcontinental Freight Bureau. In practice transcontinental rate matters are handled for the S. P. & S. by parent line representatives at the Chicago meetings of the Transcontinental Freight Bureau. When we of the S. P. & S. receive an application from a shipper for a new transcontinental rate or a change in an existing rate to apply to or from S. P. & S. System points which involves joining with any carrier other than the Great Northern or Northern Pacific, we transmit that request to the traffic officials of the two parent lines at St. Paul, and we act in accordance to their decision, which is customarily submitted to us over the joint signatures of the Great Northern and the Northern Pacific traffic officers.

Q. Can you give us some examples of these practices which you have described with respect to transcontinental rates?

[fol. 3323] A. Yes, I have three that are representative. The first one covers grain and grain products from Transcontinental Freight Bureau groups H. and N., also points on the Moffat Division of the D. & R. G. Western, taking group J rates. When stopped for transit privileges as published by individual lines and destined to Astoria, Oregon, may route via the Bieber gateway. The request for rates via this route was submitted to the S. P. & S. by the Colorado Milling and Elevator Company, Denver, Colorado, and Pillsbury Mills, Inc., Astoria. Upon receipt of the request we wrote the Great Northern Railway for their concurrence in the establishment of the new route, which was granted. The Northern Pacific was furnished a copy of our letter to the Great Northern, however, no reply was received from the Northern Pacific, hence we assumed it did not object to the establishment of the route.

The second example I have is cottonseed oil originating at points in Louisiana, New Mexico, or Texas, when stopped for transit privileges in California and destined to Astoria may route via Southern Pacific, Portland, S. P. & S. Swift & Company originally filed an application with us for this privilege, and we in turn communicated with the Great Northern and Northern Pacific to seek their concurrence in the establishment of the route because the applicant desired to refine cottonseed oil in transit at Southern Pacific points in California. The application was not opposed by the [fol. 3324] Great Northern nor the Northern Pacific.

I might say at this point that the fish canneries at Astoria consume many carloads of cottonseed oil in the canning of fish and Swift & Company desire to meet the competition of Middle-western shippers.

Three, we received an application for the establishment of rates on forest products from Oregon Electric stations located on the Santiam Branch to all local points on the Union Pacific via the Portland gateway. This application was submitted to our parent lines, the Northern Pacific and Great Northern, both of which objected to the granting of the application. However, they did authorize us to negotiate the establishment of the rates via Portland to points on the Union Pacific west of Cheyenne, Wyoming, and as to points on the Union Pacific east of Cheyenne,

Wyoming, they approved the negotiation of the rates for application by S. P. & S. parent lines via Laurel, Montana, thence Chicago, Burlington and Quincy, and then the Union Pacific. We then communicated with the Union Pacific and offered to publish the rates in accordance with the authority given to us by our parent lines. The Union Pacific made no reply to our offer.

Mr. Rockwood: Now we are going on a slightly different subject.

Mr. Maguire: Before we recess, Mr. Examiner—

A. I have one other example which I have crossed out and [fol. 3325] will be explained in my routing exhibits.

Mr. Maguire: I wish to call attention to the fact, Mr. Examiner, that so far as this portion of Mr. Ehlen's testimony is concerned, that is, the handling of rate proposals, that with the exception of very few interpolations he has read almost continuously from a continuous manuscript.

Mr. Rockwood: This will be given to you.

Mr. Maguire: Well, I will be glad to have that.

Exam. Dishman: We will take a short recess.

(Short recess.)

Exam. Dishman: On the record.

By Mr. Rockwood:

Q. Mr. Ehlen, you have referred to instructions from traffic officials of the Great Northern and Northern Pacific. In all cases are your instructions from the parent companies joined in by both of them?

A. I cannot recall any instance where we have conflicting instructions from the two parent lines. If in some cases the initial views of one of the parents differs from the initial views of the other, in practice they resolve their differences before issuing the instructions to us, so that instructions as we receive them are approved by both.

Q. How are the matters relating—

Mr. Maguire (interrupting): Just a moment, please. I believe the question was whether instructions were ever given by one of the so-called parent companies, and

[fol. 3326] with that explanation the answer is that the instructions are in all cases issued by both or approved by both. I don't know that there was a direct answer to that question.

Mr. Rockwood: I said approved by both.

By Mr. Rockwood:

Q. Is there any qualification you want to make of that, Mr. Ehlen? Maybe this is a good time for you to tell us.

Exam. Dishman: You didn't understand his answer?

Mr. Maguire: As I understand the answer it was not responsive to the question. The question was whether they were ever issued by one or the other and he said they were approved by both. But the question, I think, was whether they were issued by both.

By Mr. Rockwood:

Q. May I ask this: In what form do the instructions of the parent lines come to you?

A. The instructions of the parent lines are received by me over the signatures of both the parent line traffic officials.

Q. We will come to that a little maybe more in detail.

Proceed and tell us how these matters relating to rate-making policies and practices are handled between you and the parent lines representatives.

A. The discussions and correspondence between the S. P. & S. officials and the parent line officials are either with the parent line traffic officers at Seattle or with the parent line officers with headquarters in St. Paul. These [fol. 3327] communications are constant and are handled by discussions, conferences, mail, telegraph, and frequently by telephone. Rarely does a week go by without submission by the S. P. & S. to the parent line traffic officials of some rate-making problem in one of the categories which I have described.

Mr. Maguire: Now, could I interrupt. Might I ask a question for clarification, Mr. Examiner?

Exam. Dishman: All right.

Mr. Maguire: When you use the phrase "parent lines" as referred to quite often in your testimony you are referring to the Great Northern and Northern Pacific?

The Witness: I am referring in every instance to the Great Northern and Northern Pacific.

By Mr. Rockwood:

Q. Will you proceed?

A. Frequently these communications relate to subjects which have not reached a point of concrete proposals by us or by any shipper but consists of an interchange of ideas on general and specific subjects, which may never grow into a concrete proposal. We of the S. P. & S. are subordinate traffic officials under the direction and guidance of our superiors, the traffic officials of the two parent lines.

Mr. Maguire: Just a moment. I move that that last statement be stricken as a conclusion of the witness.

Mr. Rockwood: Quite factual, under the circumstances which he has already described."

[fol. 3328] (Answer read.)

Mr. Maguire: That calls for a conclusion.

Exam. Dishman: Being subordinate?

Mr. Maguire: Yes, being subordinate to the superiors of the two parent lines. I think that is a conclusion and besides that is one of the issues in this case.

Exam. Dishman: The witness is testifying about having received instructions.

Is that a continuation of your remarks about how instructions were received?

The Witness: Yes, sir.

Mr. Maguire: The thing that I am objecting to, Mr. Examiner, is this, is the conclusion that the S. P. & S. traffic officers are subordinates of their superiors, the traffic officers of the Great Northern and Northern Pacific. That is one of the points at issue here and that is just a conclusion stated by this witness.

The factual recital of the relations between them is perfectly admissible.

Exam. Dishman: But you object to the word "superiors"?

Mr. Maguire: And "subordinates" as well.

Exam. Dishman: "Subordinates"?

Mr. Maguire: I object to that last answer as being a conclusion of the witness.

Exam. Dishman: The motion will be granted.

[fol. 3329] Mr. Maguire: Thank you.

By Mr. Rockwood:

Q. All right, do you ever take action with respect to S. P. & S. traffic matters contrary to the directions of the traffic officials of the two parent lines?

A. We never take action contrary to the instructions of the parent lines.

Q. Are all matters relating to rates and practices in which the S. P. & S. will concur initiated by the S. P. & S. traffic officials at Portland?

A. No. Frequently matters will arise and be considered in St. Paul or in Seattle by the traffic officials of the parent lines before we on the S. P. & S. hear anything about it. Sometimes we are consulted before any final decision is made, but in some cases we are not even consulted, and the first we know of the matter is when we receive instructions from St. Paul or Seattle to do particular things.

Q. And when you are so directed to do particular things, do you do those particular things?

A. We do.

Q. How does the S. P. & S. handle the matter of traffic solicitation?

A. The S. P. & S. has no off-line representatives soliciting traffic for us. All off-line solicitation for traffic moving over the S. P. & S. is handled through the parent lines through their own traffic representatives throughout the United [fol. 3330] States. All Northern Pacific and Great Northern Railway agents are the direct representatives of the Spokane, Portland and Seattle Railway System. A direct statement to that is published regularly in the Railway Official Guide. We do have traffic solicitors who work in our local territory to solicit traffic to and from points on our line.

Q. In the work of your local traffic solicitors in your local territory, what do your local traffic solicitors do with respect to routing in their solicitation efforts?

A. If the traffic is such that it can move over one or the other of the parent lines we, of course, solicit the traffic for movement that way, making no distinction between the two parent lines in our solicitation efforts. So far as our solicitors are concerned, if we can obtain traffic to move over one or the other of the parent lines, it is entirely immaterial which of the two parent lines is used, and that choice is left to the shipper or the consignee without any effort on our part to influence his choice.

Q. Are there any other matters in which you as a traffic manager are involved as to which you receive and act upon instructions from the traffic officials of the parent lines?

A. Yes. Traffic solicitation and rate making aren't principal duties of the traffic department, but we receive from the parent lines directions with respect to every phase of the operations of the traffic department. The effort to locate [fol. 3331] industries on our line is one part of the traffic solicitation, and is, that is, to get more business.

I have before me a letter dated July 2, 1943, from Mr. F. R. Newman, traffic vice-president of the Great Northern, and Mr. R. W. Clark, traffic vice-president of the Northern Pacific, addressed to Mr. Moore, my predecessor, in charge of S. P. & S. traffic, which reads as follows—

Mr. Maguire (interrupting): Let me look at that before it is read, would you mind, Mr. Ehlen?

The Witness: Yes, sir.

By Mr. Rockwood:

Q. Will you proceed, Mr. Ehlen.

Mr. Rockwood: The record shows that Mr. Maguire, I take it, has had the opportunity to examine the letter.

By Mr. Rockwood:

Q. Will you proceed now, Mr. Ehlen.

A. The letter is a joint letter. The heading of the letter is Great Northern Railway Company, Northern Pacific

Railway Company, St. Paul, Minnesota, July 2, 1943. It is addressed to Mr. J. C. Moore, general freight and passenger agent, Spokane, Portland and Seattle Railway, Portland, Oregon.

"Dear Mr. Moore:

"The attached memorandum outlines the procedure we wish to have followed in the handling of applications for leases, spur track agreements, and inquiries concerning industrial locations or other facility on the property of or served by the S. P. & S. System lines. Will you please [fol. 3332] arrange to place this program into effect. We are instructing our West End people accordingly.

"Very truly yours." Signed Great Northern Railway Company, F. R. Newman, vice-president, Northern Pacific Railway Company, R. W. Clark, vice-president.

A copy of this letter was submitted to Mr. B. S. Merritt, who was a West End traffic official of the Great Northern, and Mr. J. L. Burnham who was a West End traffic official of the Northern Pacific at Seattle, Washington, also to Mr. P. H. Burnham of the Great Northern in St. Paul, and Mr. W. H. Millard of the Northern Pacific.

Exam. Dishman: What is that date of that?

The Witness: The date is July 2, 1943.

Exam. Dishman: Are you citing that as an example of the way you receive instructions?

The Witness: Yes, sir.

By Mr. Rockwood:

Q. Proceed, will you now.

A. Accompanying that letter was a two-page memorandum stating the procedure to be followed in handling such matters. This matter was initiated by S. P. & S. officials but on the other hand came to us from the two parent line vice-presidents without any previous consultation with S. P. & S. officials, and we as a matte. of course immediately put into practice the procedures outlined in that memorandum. This is one example of the complete coverage by the parent line officials of their control of all matters relating to the

[fol. 3333] activities of the traffic department of the S. P. & S.

Mr. Maguire: Just a moment, Mr. Rockwood. Pardon the interruption.

I move that last sentence be stricken as argumentative. It is one of the examples of their complete control.

Mr. Rockwood: He did not use the word "control".

Mr. Maguire: Read from your text again, will you.

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

Let the answer stand for whatever weight the Commission may want to give it.

It is a continuation of the evidence you have been giving about the instructions you received, you intended it as such?

The Witness: Yes, Mr. Examiner, we receive those instructions continually and we are under complete control of the parent line.

Exam. Dishman: No, we will strike that.

Proceed.

By Mr. Rockwood:

Q. Have you read the testimony of Mr. Engel who testified for the complainant in the hearing at Portland on June 24? That appears in the transcript beginning at page 138, relating to the voting rights of the S. P. & S. as a member of the North Pacific Coast Freight Bureau.

[fol. 3334] A. I was present at the time he testified concerning that subject and I have since read the transcript of his testimony beginning at the place to which you refer.

Q. How long have you personally been familiar with the activities of the S. P. & S. in the North Pacific Coast Freight Bureau?

A. I have participated for the S. P. & S. in activities of the North Pacific Coast Freight Bureau since the year 1924. That does not mean that I have attended the committee meetings, but my first activity in the Bureau was in 1924 when I started to attend rate check meetings.

Q. Have you made a study of the history of the organization of the North Pacific Coast Freight Bureau?

A. I have.

Mr. Rockwood: I ask that there be marked for identification a series of sheets that are not all tacked together but I want to have it numbered as one.

Exam. Dishman: This will be one exhibit.

That will be identified as Exhibit No. 78.

(Defendant's Exhibit No. 78, Witness Ehlen, was marked for identification.)

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

By Mr. Rockwood:

Q. What have you obtained bearing on the subject of [fol. 3335] the history of the North Pacific Coast Freight Bureau?

A. The North Pacific Freight Bureau at my request filed a record of all pertinent documents relating to its organization from the time of its organization in 1920.

Q. Is this exhibit which has been marked for identification Exhibit No. 78 the compilation to which you refer?

A. It is.

Q. And that was supplied to you by the chairman of the Bureau, Mr. Watson?

A. Yes, sir, it was supplied to me by Mr. W. R. Watson, chairman of the Bureau.

Q. Prior to the adoption of the Western Traffic agreement to which Mr. Engel referred, what in general was the extent of the participation by the S. P. & S. in the affairs of the North Pacific Coast Freight Bureau?

A. Throughout the entire period, except for a brief period beginning with the year 1933, the traffic officials of the S. P. & S. participated in the activities of the Bureau as a full voting member and throughout the period the S. P. & S. was a member of the executive committee and of the freight traffic committee.

Q. Now, you referred to a brief period in 1933. What was the situation in that period to which you referred.

Q. That was a period mentioned by Mr. Hart as the [fol. 3336] second phase of the operation of the S. P. & S., beginning with the year 1933, about February, the S. P. & S. was reorganized, and the parent lines decided that our organization would be merely a skeleton organization, and they would represent us at the North Coast Bureau meeting.

Q. And for a period did you refrain from attending North Coast meetings?

A. As the record shows or the file shows, we did not attend the first meeting, but as time went on it was found essential that we do attend the meetings because there were so many local matters in our territory that the parent lines did not have first-hand information on and for that reason they asked the members of the committee to permit us to appear at these meetings while subjects covering matters in our territory were considered.

I have before me a letter written by Mr. R. W. Pickard, general freight agent of the S. P. & S., to Mr. S. J. Henry, dated February 10, 1933, in which he stated as follows:

"Effective February 16, under our reorganization we have concluded that it will be impossible for us to be represented directly at Bureau meetings, and an agreement has been reached with the Northern Pacific and Great Northern to have their representatives look after our interests. While this will be the general practice, at the same time it occurs to me that subjects will be coming up on the docket from time to time in which we have a pretty [fol. 3337] direct interest, and that may make it necessary for me to come possibly for one day at least in instances where we have a particular interest in some certain subjects.

"I would appreciate it if you would bring up at the February meeting with all lines the question of allowing us to come before the meeting on some particular day for the sole purpose of discussing particular subjects out of their regular order on the docket, more or less on the plan that has been followed by some of the other member

lines; and after you have had a chance to discuss the matter, would appreciate your letting me know if this will be satisfactory to all concerned."

Q. How long did that general practice continue, and when did that period—what happened after the end of that period?

A. We gradually, as time went on we gradually, attended more of the meetings. The agent of the North Pacific Coast Freight Bureau granted our request to attend the meetings while our subjects were to be discussed. A letter that he wrote, Mr. Henry wrote Mr. Pickard on February 11, 1933, states in part;

"I talked today with Milwaukee and Great Northern and Northern Pacific people. They say if and when you attend you should desire consideration given to any particular subject during the day you are here we would gladly yield to any time you may desire. They appreciate this is only fair and they are glad to concur in this arrangement. I [fol. 3338] assume Messrs. Miller and Kelling will also be glad to agree to this plan. I will discuss it with them at the first opportunity or, if you prefer, you can do so."

This plan of attending the committee meetings for a short period while our subjects were to be discussed continued on through November, 1933, because I took out of the files a telegram from Mr. Henry to Mr. Pickard, dated November 23, 1933, in which he called a meeting to be held in his office at 9 o'clock November 24 and asked if we would attend. We replied that the Great Northern and Northern Pacific will represent us at this meeting. We also in turn wired Mr. J. L. Burnham of the Northern Pacific in Seattle and Mr. P. H. Burnham of the Great Northern in Seattle to represent us at that particular meeting.

Q. You don't need to give all of the steps in the departure from that policy. Is it a fact, as you stated a moment ago, that that lasted for a short period?

A. It did.

Q. And then after that you resumed, as you had before, acting as a full voting member and member of committees?

A. That's right.

Q. And was that the situation as it existed immediately prior to the adoption of the Western Traffic agreement?

A. It was.

Q. All right. Was any change made in that participa-
[fol. 3339] tion by the S. P. & S. at the time of the approval by the Interstate Commerce Commission of the Western Traffic agreement?

A. No, no change whatsoever was made and it never occurred.

Mr. Maguire: I object and ask that last be stricken.

Exam. Dishman: Just stop when no change was made. You don't object to that?

Mr. Maguire: No, I don't object to that.

Exam. Dishman: Isn't that an answer to your question, Mr. Rockwood?

Mr. Maguire: Could I ask a question for clarification?

Exam. Dishman: All right.

Mr. Maguire: It is not clear to me how long the abstention of the S. P. & S. from regular attendance upon the meetings, how long that period lasted. I get from the testimony it started in February of 1933, but it is not clear to me when this period of abstention ended.

By Mr. Rockwood:

Q. Well, was there a sharp date of the end of the period or what happened, Mr. Ehlen?

A. According to the files we did not attend the February 1933 meeting, but we resumed attendance for the one day. From that time on until I would say after November 1933.

Q. Was that the beginning of the resumption of participation as a voting member and the act of participation in the affairs of the committees, about the end of 1933, am I right?

A. No. We continued to participate in the committee
[fol. 3340] meetings, I would say, we attended the March meeting of 1933. The reorganization took place in February 1933, and the parent lines at that time decided that

they would represent the S. P. & S. at the committee meetings.

Q. But then in the year 1933 sometime you resumed participation in the affairs of the committees?

A. Well, we resumed participation the very next month, and that would be March 1933.

Q. All right.

Mr. Rockwood: Does that answer it, Mr. Maguire, or do you want some more?

Mr. Maguire: No, no, I think that is fine.

Mr. Rockwood: Excuse me, I am not being facetious.

By Mr. Rockwood:

Q. As I recall, you said beginning in March you began attending for one day. When did you resume full participation?

A. Well, I can't give a definite answer to that. We carried on for possibly a year or so before we began full participation, as I recall it, from my own general knowledge.

Q. As we stand, I asked you if any change was made at the time of the adoption of the Western Traffic agreement and your answer was that no change was made?

A. No change was made.

Q. And after Mr. Maguire's remarks the balance of your answer was stricken. Were you aware of the fact that [fol. 3341] the language of Section 8 of Article XI of the Western Traffic agreement contained the provision of which Mr. Engel quoted at page 139 of the transcript reading: "Each member of any committee shall have one vote except that where two or more carriers are under common management or control such carriers will be considered as one member." Were you aware of the fact that that language was in the agreement?

Mr. Maguire: Before you answer, Mr. Ehlen.

I object to that because the question of the awareness or non-awareness of Mr. Ehlen is entirely immaterial to the issues in this case.

Mr. Rockwood: Mr. Examiner, I think that is quite material. If this question had been raised at the time of the approval of the agreement as it was raised by Mr. Engel something might have been done earlier than it has been done, as we will show in a moment. And I want to know—

Exam. Dishman (interrupting): Whether or not he was aware of that?

Mr. Rockwood: Whether or not he was aware of it, and I am endeavoring to get the facts stated as to why no action was taken by the S. P. & S. at the time of the adoption of the agreement, and I will say that I will have evidence of what has happened since Mr. Engel testified.

Mr. Maguire: I might add, Mr. Examiner, that the theory of counsel in this case seems to be that the S. P. & S. [fol. 3342] doesn't take any action, it is the so-called parent lines that take the action, and so under their own theory of the case, which I, of course, do not agree with, the S. P. & S. is more or less of, you might say, a strawman in a transaction of that kind, so the question would be whether the so-called parent lines knew anything about it under counsel's theory of the case.

Exam. Dishman: Let the witness answer for what it might be worth.

The awareness question.

A. I may have read the language at some time or other but I certainly did not appreciate its significance, the significance of it, as suggested by Mr. Engel in his testimony. The S. P. & S. traffic officials were always subject to the direction—

Mr. Maguire (interrupting): Just a moment. I move that the rest of that be stricken.

Exam. Dishman: Yes, don't go into that.

Mr. Rockwood: All right.

By Mr. Rockwood:

Q. Since Mr. Engel testified in the manner in which I have quoted and cited, has any action been taken by the North Pacific Coast Freight Bureau with respect to the rights and powers of the S. P. & S.?

A. Yes, on November 10, 1954, Mr. W. E. Nicholson,

western traffic manager of the Great Northern and Mr. F. A. Cleveland, western traffic manager of the Northern Pacific, both with headquarters in Seattle, addressed a letter to [fol. 3343] Mr. W. R. Watson, chairman, North Pacific Coast Freight Bureau, Seattle, proposing that Section 8 of Article XI be amended so as to read as follows:

"Section 8. Voting Power. Each member of any committee shall have one vote except where two or more carriers under common management and control"—

Q. (Interrupting) Are under common management and control.

A. "Except that where two or more carriers are under common management or control such carriers will be considered as one member, except the Spokane, Portland and Seattle Railway Company shall be entitled to one vote."

This was then docketed on the North Pacific Coast Freight Bureau docket as No. CNC-731 and was considered by a special committee of the membership of the Bureau on November 10, 1954.

Q. Is that a special committee of the membership or—

A. (Interrupting) Yes, it was a special committee of the membership.

Q. Or was it a meeting of the membership?

A. A special meeting of the membership.

Q. That is what I was wondering, was it a meeting of the committee or a meeting of the entire membership?

A. It was a meeting of the entire membership.

Q. All right, proceed.

A. The proposal was approved by the required number of affirmative votes as prescribed in Article XVI of the [fol. 3344] Article. This was reported to Mr. H. C. Barron, counsel, executive committee, Western Traffic Association, by Mr. Watson's letter of December 24, 1954, and after some exchange of correspondence between Mr. Barron and Mr. Watson was submitted to the Interstate Commerce Commission for approval, and Mr. Barron's letter of January 21, 1955, to the secretary of the Interstate Commerce Commission with a petition for approval by the Interstate Commerce Commission. The petition for approval is now pending before the Interstate Commerce Commission.

Q. Was the form of the amendment which you quoted a

moment ago similar to that of material contained in the Articles relating to any other freight bureau?

A. Yes, the form is the same as that of Section 8 of Article X relating to the Pacific South Coast Freight Bureau, also included in the articles of organization and procedure of the Western Traffic Association.

In Article X a similar exception is made in the language, and I quote:

"Except the Pacific Electric Company shall be entitled to one vote. In Section 2 of Article X it is noted that the Pacific Electric Company is a subsidiary of the Southern Pacific Company."

Q. If the amendment in the form that you have quoted is approved by the Interstate Commerce Commission, will there be, in fact, any change in the extent of participation by [fol. 3345] the S. P. & S. in the affairs of the Bureau from that which it has been heretofore, as you described it?

A. None whatever. It will only remove any doubt which there may be—

Mr. Maguire (interrupting): Just a moment. I object to any argumentative statement made not in response to the question.

Exam. Dishman: You just said none, that will be sufficient.

By Mr. Rockwood:

Q. Mr. Ehlen, have you made an analysis of the data contained in Complainant's Exhibit No. 1 presented by Mr. Nickels at the hearing in Portland in June 1924?

A. I have.

Exam. Dishman: The exhibit just distributed will be No. 79.

(Defendant's Exhibit No. 79, Witness Ehlen, was marked for identification.)

By Mr. Rockwood:

Q. Is this Exhibit No. 79 one prepared to show the results of your analysis of the Nickels' Exhibit 1?

A. It is.

Q. Will you proceed, please, to tell us what you have shown in this exhibit and what results you arrived at, what conclusions you arrived at.

A. The exhibit is an analysis of Exhibit No. 1, Witness Nickels.

Page 1 shows the number of carloads of westbound traffic, and we have broken that traffic down in accordance with our study.

[fol. 3346] The column—

Q. (Interrupting) Just a minute. Is it true that the reference notes at the bottom of the page are the column headings for the columns on this page, numbers 1 to 7?

A. They are.

Q. And were put down at the bottom because they were too long to type at the top of the page?

A. That is right.

Q. All right, with that will you proceed.

A. Column 1 shows pages 1 and 2. That is the traffic shown in Mr. Nickels' Exhibit as originating at points on the Milwaukee Railroad and terminating at points on the S. P. & S. Mr. Nickels shows a total of 434 cars on page 2 of his exhibit. We have deducted six cars from that total, which are cars that moved via the Milwaukee long haul to Spokane or Marengo.

Q. In other words, it is traffic on which the Milwaukee actually had a long haul?

A. Yes, sir.

Q. All right.

A. Which leaves a total of 428 cars. Our check corresponding with the 428 cars we found only 423 cars. Of the 423 cars 339 cars terminated at points competitive with the Southern Pacific and Union Pacific and could have been handled by the Milwaukee's long haul to Marengo thence Union Pacific.

The 84 cars terminated at S. P. & S. local points in which [fol. 3347] the Milwaukee could not participate.

Q. Are each of the following lines of that exhibit down to the line of totals prepared in a similar manner for the data on the pages of Nickels' exhibit to which you referred?

A. They are.

Q. Do you wish to comment on the total?

A. Of the total of 1,047 cars shown in Mr. Nickels' exhibit which represents westbound traffic 26 of them were

handled by the Milwaukee long haul, leaving a total of 1,021 cars. Our check shows 1,037 cars, of which 906 cars terminated at competitive points, that is, points competitive with the Union Pacific and Southern Pacific, to which points rates now apply via the Milwaukee to Marengo, thence Union Pacific. This leaves a total of 131 cars in which the Milwaukee could not participate.

Q. Just a minute. Were you present at the hearing in Chicago when Mr. Hettinger testified for the Milwaukee and made a further analysis of the material in Nickels' Exhibit 1 and furnished the back-up data for the statements made by Mr. Kiley, their president, when he testified at the hearing in June in Portland?

A. I was.

Q. Have you checked that Hettinger exhibit to determine whether he made similar deductions in his analysis of cars on which the Milwaukee actually had the long haul as far west as Spokane, of the category included in your column 3? [fol. 3348] A. He did.

Q. Eliminated the same cars?

A. He eliminated the cars.

Q. Cars in the same category?

A. Yes, sir.

Q. All right, turn to page 2, and start on the first line of that, or describe that similarly.

A. Page 2 is a similar analysis, except that it covers eastbound traffic.

Pages 12 and 13 of Mr. Nickels' exhibit shows traffic originating at points on the S. P. & S. and terminating at points on the Milwaukee. Mr. Nickels' check shows 1,210 cars, of which 430 cars the Milwaukee received its long haul, which leaves 780 cars that compare with the 764 cars shown under column 5.

Q. Was that the S. P. & S. check?

A. That was the S. P. & S. check. Of the 764 cars 341 of them originated at points competitive with the Southern Pacific or the Union Pacific and could have—no, strike that. Of the 764 cars 341 cars could have moved via S. P. & S. Spokane thence Milwaukee under present rates and routes.

Q. What was that traffic, what commodity?

A. That was all forest products.

Q. When you say it could have moved under existing routes of the nature described and discussed in Exhibit 28 by you?

[fol. 3349] A. Yes, that's right.

Q. All right, proceed to the next column.

A. The next column, under column 7, is shown 92 cars that originated at competitive points and could have been routed via Marengo in connection with the Milwaukee long haul, making a total of 433 cars that the Milwaukee could under solicitation participate in its long haul movement from either Spokane or Marengo.

Q. And then what is the figure in the last column?

A. The last column the figure of 331 cars is traffic that the Milwaukee could not participate in under the rate structure.

Q. Well, now, that explains the first line column (3), is the explanation at the bottom of the page, note (a), under (3)?

A. That is under 3.

Q. On the next line you have a reference in column 3 with the letter "(b)", why was that eliminated?

A. The 27 cars under column 3 with the (b) reference, these cars did not originate on the S. P. & S. System, they were 27 cars of wood pulp that originated at Camas, Washington, and were transported by the Western Transportation Company to Portland, which—this company, the Western Transportation Company is a carrier which is not a party to this complaint.

Q. While we are on that subject the Western Transportation Company has been mentioned. Tell us briefly what the Western Transportation Company is.

[fol. 3350] A. The Western Transportation Company is a river carrier, subsidiary of the Crown Zellerbach Corporation. It handles practically all of the products of the Crown Zellerbach Corporation from its paper mills at Camas and West Linn, Oregon.

Q. Camas, Washington?

A. Camas, Washington, and West Linn, Oregon. They recently acquired the paper mill company at St. Helens, Oregon, and are progressing the matter of through rates

and routes from St. Helens via the Western Transportation Company to Portland and the various rail carriers beyond.

Q. At Portland or at the Portland Junction does the Western Transportation Company have rates jointly with all carriers serving Portland?

A. They have rates with all rail carriers serving Portland.

Q. With that exception the second line referred to as 14 and 18 is prepared on the same basis as the first line 14.

A. I don't quite—

Q. (Interrupting) That is the second line of this tabulation, designated 14-18?

A. Yes.

Mr. Maguire: Just a moment.

The Witness: That is pages 14-18.

Mr. Maguire: Are you talking about second column?

Mr. Rockwood: Second line of this table.

Mr. Maguire: That refers to page 19 according to the [fol. 3351] exhibit, don't it?

Mr. Rockwood: No, the first line is 12-13, the second line is 14-18.

Mr. Maguire: Oh, I see. I misunderstood you.

Mr. Rockwood: The first line is page 18.

Mr. Maguire: Just forget I said anything.

Mr. Rockwood: I will try to.

By Mr. Rockwood:

Q. There is no figure in column 6 on the second line. What is the significance of the absence of a figure in that column?

A. Through rates from the S. P. and S. System do not apply via Spokane, Milwaukee to the Milwaukee connections beyond.

Q. And there was no traffic of the nature of forest products on the first line for which there are through rates?

A. There are no through rates.

Q. There was no traffic?

A. No traffic, no, sir.

Q. Now, on the third line designated 19, there is a substantial difference between the adjusted Milwaukee figure of 1,178 and the S. P. & S. check of 1,015. That is a difference

of 163 cars. From your data have you a possible explanation of that substantial difference?

A. Well, our account department checked the Nickels' exhibit over, or our records over three times, to reconcile that difference, and the only answer they could come up with [fol. 3352] is that there were 106—

Mr. Maguire (interrupting): Just a moment, pardon me. Is this going to be an explanation of what the accounting department explained? If it is I object on the ground that it is not within the knowledge of this witness.

By Mr. Rockwood:

Q. Have you participated with the accounting department throughout the preparation of this exhibit?

A. I have.

Q. And have you had accounting department work sheets and worked some of the original records along with the accounting department people?

A. I have.

Exam. Dishman: What you are about to say is of your own knowledge?

The Witness: Yes, sir, it is, sir.

Exam. Dishman: All right, proceed.

By Mr. Rockwood:

Q. All right, proceed.

A. The January account shows 70 cars of lumber—

Q. (Interrupting) From what railroad is this?

A. From the Oregon Trunk Railroad.

Q. Yes.

A. And the February account 93 cars. We feel that there is—

Q. (Interrupting) That is a total of?

A. That is a total of 163 cars, and the difference between the Milwaukee check and our check is possibly due [fol. 3353] to a Milwaukee duplication, and that can only be resolved by our accounting department sitting down with the Milwaukee accounting department and determining where the error occurred.

Q. Except for that the differences are not great until you

come down to the line 24-28 where the Milwaukee adjusted figure per years 1,057, the S.P. and S. figure is 971, a difference of 86 cars, is that right?

A. That is right.

Q. Have you any explanation whatsoever for that difference of 86 cars, the failure of the figures to jibe?

A. I have no explanation for the difference. We could not reconcile our records with the Milwaukee records.

Q. Now in the line designated on page 22 as 22-23, in the sixth column and in the eighth column, there are asterisks opposite certain figures. What is the significance of those asterisks?

A. There were 148 cars that originated on the Santiam Line of the Oregon Electric, and had the rates been in effect, as explained in my Exhibit 28, the total traffic that the Milwaukee could have participated in via the S. P. & S. Spokane and Milwaukee would have been 347 cars.

Q. Including the 148 cars?

A. That includes the 148.

Q. Under the rates as they actually exist at the present time the Milwaukee could not have handled those cars from the Santiam Branch, is that correct?

[fol. 3354] A. They could not participate in the 148 cars.

Q. Now will you proceed to tell us and make any comment you wish with respect to the totals on the last line of this table on page 2.

A. The last line shows the, in column 2 shows the, total cars in Mr. Nickels' exhibit, being 5,337 cars. We have deducted from that figure the 520 cars in which the Milwaukee received its long haul or except for the 27 cars that originated at Camas and were handled by the Western Transportation Company. The 27 cars are included in the 520, which leaves 4,817 cars. Our check comparable to that 4,817 amounts to 4,527 cars, of which 1,029 cars—

Q. (Interrupting) You are mis—

A. (Interrupting) I mean of 1,029 cars which includes the 148 from the Santiam Branch, as I mentioned before, and column 7, 2,024 cars that originated on our line could have moved via the S. P. & S. and Union Pacific Marengo routed under present through rates and routes. This gives us a total of 3,053 cars that the Milwaukee could have par-

ticipated in, except for the 148 cars mentioned from the Santiam Line.

The last column 9, a total of 1,474 cars is traffic originating at points from which no through rates were published or available via the long haul.

Q. Via the Milwaukee long haul?

A. Via the Milwaukee long haul.

[fol. 3355] Q. All right, turn to page 3, what have you shown here?

A. Page 3 is a summary of the east and westbound traffic. It shows the total cars in column 1, total cars as determined by the S. P. & S. check. Eastbound 4,024 cars, westbound—

Q. (Interrupting) Wait a minute.

A. (Continuing) —eastbound 4,527 cars, westbound 1,037 cars, or a total of 5,564 cars.

Of this amount there was open to Milwaukee solicitation on eastbound traffic 3,053 cars and on westbound traffic 906 cars, making a total of 3,959 cars.

On the eastbound traffic a number of cars in percentage open to the Milwaukee solicitation was 67.4 per cent. On westbound traffic 87.37 per cent, or a total of 71.15 per cent of the traffic that was open to Milwaukee solicitation.

Q. Have you any source available to you from which you could determine the extent to which the Milwaukee actually solicited and handled traffic with the long haul to or from Spokane or Marengo, to or from points competitive with the S. P. & S.?

A. I do not.

Q. Do you recall whether any statement was made in this record as to whether the Milwaukee had prepared such data, do you recall?

A. I don't recall that the Milwaukee prepared such data. However, the data was requested but not furnished.

Mr. Maguire: Just a moment.

[fol. 3356] Mr. Rockwood: No, the date was not requested, that is a mistake.

A. The work sheets.

Mr. Maguire: I think the witness is going a little bit too far. He has already answered the question. He always seems to be anxious to add—

Exam. Dishman: Well, let's strike that.

Proceed.

Mr. Rockwood: I won't put this in the record but if the parties are interested they can read Mr. Nickels' testimony at page 181 and 182, I won't quote him at the moment.

By Mr. Rockwood:

Q. Did you hear the testimony at the June 1954 hearing of Mr. Fred S. Holden of Holden Lumber Company with a mill at Prescott, his testimony beginning at page 143?

A. I did.

Q. Have you made an analysis of the shipments by Holden Lumber Company for the year 1954?

A. I have.

Mr. Rockwood: I would like to have marked for identification this exhibit.

Exam. Dishman: The exhibit being distributed will be Exhibit No. 80.

(Defendant's Exhibit No. 80, Witness Ehlen, was marked for identification.)

By Mr. Rockwood:

Q. How many cars did Holden Lumber Company ship [fol. 3357] over the S. P. & S. from the mill at Prescott in the year 1954 and from what periods were those cars shipped?

A. The total cars shipped for the full calendar year was 134 cars, of those 123 cars were shipped with a relatively uniform volume in the first seven months of the year. After August 1, 1954, only 11 cars were shipped by that firm, including three in August, three in September, and five in October. There have been no shipments from that mill since October, and apparently the mill has been shut down since about the 1st of August.

I checked to determine whether the mill had resumed operation just before I left and it developed that the mill has not resumed operation.

Q. Is this exhibit marked No. 80 a further analysis of the Holden shipments in 1954?

A. It is.

Q. Will you proceed to tell us what you have shown in this exhibit.

A. I have prepared a statement concerning a further analysis of the business from that mill.

Page 2 of the exhibit in the first table shows the destinations to which the Holden cars in 1954, shipped by various shippers, moved. I have shown there the figures for shipments in which Timberlane Lumber Company was named as consignor.

Mr. Taylor testified at this hearing with respect to the business of that company.

[fol. 3358] I have also shown the business shipped by the Eugene Willamette Lumber Company as consignor. Mr. Knutsen testified at this hearing with respect to the business of that company.

I have also shown separately the shipments in which Lloyd W. Wise was named as consignor. Mr. Holden in his testimony referred specifically to the business of Mr. Wise.

I have lumped together the business as to which the consignors were other than the first three named. The cars shipped by other shippers include three for which Holden Lumber Company itself was consignor and shipments by eight other shippers. Since those other shippers were not represented at the hearing and were not specifically referred to I have not shown their business separately.

The first table shows the destination territory for all the shipments. Thus the shipments east of Chicago constitute 59.7 per cent of the total, and the shipments to Western Trunk Line states constituted 29.1 per cent of the total. Thus 88.8 per cent of all shipments moved to these two territories and shipments to all other territories constituted only 11.2 per cent of his total shipments.

It is apparent from this showing that Timberlane and Eugene Willamette—

Mr. Maguire (interrupting): Just a moment, the witness is starting a sentence in an argumentative tone at least.

Mr. Rockwood: Never mind, skip that sentence, Mr. Ehlen.

[fol. 3359] By Mr. Rockwood:

Q. How many cars of the total were shipped by those two consignors?

A. Sixty-five cars.

Q. What percentage of the total were shipped by those two shippers?

A. Forty-eight per cent.

Q. Mr. Maguire objects to your stating whether they were principal wholesalers or not and I won't ask you.

Mr. Maguire: The only difficulty I am pointing to here, Mr. Examiner, it may irritate Mr. Rockwood, but this witness has been reading almost entirely from prepared manuscript and no copy has been given to me. I would not be offering these objections if I knew what was coming up. So I think counsel should take that into consideration before he gets irritated about it.

Exam. Dishman: Proceed.

By Mr. Rockwood:

Q. What have you shown in the table at the bottom of the page, Mr. Ehlen?

A. At the bottom of the page I have shown the number of the cars that were diverted. Of the total of 134 cars 126 cars were diverted in transit, and what I consider firm cars amounted to eight cars.

Q. Those eight cars moved without diversion to the original billed destination?

A. Yes, we could not find a diversion on the eight particular cars.

[fol. 3360] Q. If those truly were firm sales what percentage of this Holden business was so-called transit cars? Have you made that computation? You said 126 were transit out of 134?

A. I will have to make that computation.

Q. It is 126 out of 134?

A. Yes, sir.

Q. All right. Now proceed to Page 3 of the exhibit and tell us what you show here.

A. Page 3 we show the carload shipments of lumber loaded by Holden Lumber Company at Prescott during

the year 1954 that were shipped in the name of Timberlane Lumber Company. Twenty-four of the cars were billed to New York, New York, stopped part to unload at Mankato, Minnesota, and diverted to destinations by states as follows: Pennsylvania—

Q. (Interrupting) It isn't necessary to read them. The states are shown there on the exhibit, aren't they?

A. They are, sir.

Q. What happened? Tell us what you have in that next block. How are they billed?

A. Eight cars were billed to Minneapolis and were diverted to destinations by the states shown—to the states shown.

Q. And proceed down and tell us generally—

A. (Interrupting) Thirteen cars were billed to Minnesota Transfer and were diverted to the states shown. One car was billed to Buffalo, New York, stop part unload at [fol. 3361] Minneapolis and was diverted to a point in New Jersey. One car was billed to Council Bluffs, Iowa, and diverted to New York.

Q. All right. What do you show on Page 4 of the exhibit?

A. Page 4 of the exhibit shows carload shipments of lumber loaded by Holden Lumber Company, Prescott, Oregon, during the year 1954, that were shipped in the name of Eugene Willamette Lumber Company. Fourteen of the cars were originally billed to Chicago, Illinois, stop part unload at Mankato, Minnesota, and diverted to destinations by states as shown.

The cars were destined to Chicago, Illinois, part unload at Mankato and move through to billed destinations.

What I would call firm orders was one car that was destined to Wayzata Boulevard, Minnesota.

Q. On what railroad is that located, do you remember?

A. I believe Wayzata is located on the M. & St.P.

Mr. Rockwood: Great Northern.

By Mr. Rockwood:

Q. Where is that Wayzata Boulevard?

A. The Milwaukee.

Q. You will have to re-check that.

Mr. Musenbrock: Off the record a moment.

A. Wayzata Boulevard is a point close to Minneapolis on the Minneapolis, Northfield, and Southern.

The last car in the exhibit was billed to New York and was diverted to Hicksville, New York.

Mr. Musenbrock: May I ask a question about that ex-
[fol. 3362] hibit, Mr. Rockwood?

Mr. Rockwood: Sure.

Mr. Musenbrock: On Page 3, then, Mr. Ehlen, all those shipments by the Holden Lumber Company in the name of the Timberlane Lumber Company were all diverted shipments, there wasn't a firm order in the whole lot of 47, is that correct?

The Witness: They were all diverted shipments as shown in the exhibit.

Mr. Musenbrock: And not a firm car order in it?

The Witness: That is right.

Mr. Musenbrock: On Page 4 in the name of the Eugene Willamette Lumber Company the only firm orders are the ones you have just mentioned?

The Witness: Just the one order to Wayzata Boulevard, Minnesota.

Mr. Maguire: If I may ask a question for clarification there?

Exam. Dishman: All right.

Mr. Maguire: You classify as a firm order a car which was not diverted—

The Witness (interrupting): Yes, I classify that as a firm order, Mr. Maguire.

Mr. Maguire (continuing): —in this exhibit?

The Witness: That is billed and arrives at the billed destination without any diversion en route. It could—
[fol. 3363] Mr. Maguire (interrupting): You have answered the question.

By Mr. Rockwood:

Q. Go ahead. What qualification do you wish to make of that, Mr. Ehlen?

A. The car could have been delivered to a consignee at the billed destination other than the original consignee shown in the billing.

Q. And that might have been a transit car?

A. Well, you could call it a transit car within the point of destination.

Q. But you would have no way of telling whether that was a firm sale or a transit sale?

A. No, I wouldn't.

Exam. Dishman: Mr. Rockwood, does that conclude the evidence regarding the Exhibit No. 80?

Mr. Rockwood: That is right.

And we will proceed next to other data.

Mr. Maguire: Before we recess, Mr. Examiner—I assume we are going to.

Exam. Dishman: Yes.

Mr. Maguire: I would like to inquire if there are any other exhibits available now for distribution.

Mr. Rockwood: Yes, there are, and I have no objection to distributing them. I discussed with the Examiner the matter of distribution as I put them in informally, but I am perfectly willing to make them available. Let's see [fol. 3364] what we can get for you and we will give them to you after the hearing.

Mr. Maguire: Another request I have to make is this, I would like to have the opportunity to examine during the recess the manuscript from which Mr. Ehlen has so far read.

Exam. Dishman: Mr. Rockwood is agreeable to that.

Mr. Rockwood: I want the record to show that I am giving to Mr. Maguire the only manuscript which he read from as a manuscript on the subject of management and control.

He had some sheets from which he was reading but in the explanation, particularly of the Holden exhibit, he departed from and did not follow in any respect the notes that he had and he had no manuscript whatsoever for Nickels' Exhibit 1.

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

We will recess until 9:30 tomorrow morning.

(Whereupon, at 5:00 p.m., an adjournment was taken until 9:30 a.m., Wednesday, April 13, 1955.)

[fol. 3367]

Transcript of Proceedings—April 13, 1955

Exam. Dishman: On the record.

Mr. Rockwood: With the Examiner's permission I would like to withdraw temporarily the witness who was on the stand at the close of yesterday, Mr. Ehlen, in order to permit some testimony by other witnesses.

Exam. Dishman: All right, Mr. Ehlen is excused temporarily.

(Witness temporarily excused.)

FRANK A. EMME was sworn and testified as follows:

Direct examination.

The Witness: My name is Frank A. Emme, E-m-m-e. I am general chairman of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, a full-time position, with headquarters located at 305 First Federal Building, St. Paul, Minnesota.

I have been authorized by my organization and 14 other non-operating railway labor organizations to appear at this hearing in their behalf and oppose the complaint of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

Exam. Dishman: You are appearing now as intervenor in support of defendants, are you?

The Witness: Yes.

Exam. Dishman: All right.

The Witness: Spokane, Portland and Seattle Railway [fol. 3368] Company, Oregon Electric Company, and Oregon Trunk Railway, I.C.C. Docket No. 31466.

The organizations that I am appearing in behalf of represent approximately 20,000 employees of the Great Northern Railway Company. We are very much opposed to the complaint in this case. We are also vitally interested because of the effect we are sure it will have on the employment of our people. We are not too well versed in Interstate Commerce procedure but we do know that for many,

many years certain traffic originating on the Spokane, Portland and Seattle Railway Company, the Oregon Electric Railway, and the Oregon Trunk Railway, has been handled by the Great Northern Railway because of its connecting operations and management under certain joint rates for freight traffic moving both east bound and west bound to various parts of the United States and Canada. The handling of this traffic by the Great Northern over the many years has undoubtedly increased employment for the people we represent.

If this complaint were granted it would without question move a certain percentage of that traffic to railroads other than the Great Northern. We are sure that our statement cannot be disputed that this would have the effect of decreasing employment. For instance, the figures that are available to us would indicate that at the present time the Great Northern is handling approximately 12 million dollars of revenue tonnage originating on the defendant lines. If this traffic were thrown open to competition I understand [fol. 3369] that estimates have been made that at least one-third of that traffic would be diverted to the complainant lines. This would mean approximately four million dollars that would be lost to the Great Northern. The average yearly salary of a non-operating railroad employee is approximately $3,500. We understand that 50 per cent of every revenue dollar received by the Great Northern Railway is paid out in salaries and wages to its employees. Dividing $3,500 into four million, which in our estimation would be the minimum loss we could expect, and taking 50 per cent of that, we would stand to lose at the very least 570 employees if this complaint were to be granted.

These joint rates we have referred to were set up under authority of the Interstate Commerce Commission, and these 570 employees have built up their entire lives on their share of the revenue from this business. They have established their homes and their families are being fed and clothed with this money. If this complaint were to be granted they would suffer greatly with the loss of their positions. This loss could be much more than we have estimated. It is impossible to say the exact amount of business that would be transferred but there is no question but

what the complainant would benefit to the amount at least that we have estimated.

We realize that the granting of this complaint would create more jobs to complainant's railroad but it would simply mean that they would benefit and we would lose. [fol. 3370] New employees would be hired on the complainant's road and old established employees would naturally be laid off on the Great Northern property.

Our organizations feel that the welfare and lives of these people must be taken into consideration in this case, and we earnestly urge your Commission to consider these facts.

Thank you.

Exam. Dishman: Are there any questions, Mr. Torinus?

Mr. Torinus: I haven't any.

Exam. Dishman: Mr. Maguire?

Mr. Maguire: I have some.

Cross examination.

By Mr. Maguire:

Q. Your computations as to the loss of employment are based upon the premise that since 50 cents out of every present dollar the Great Northern receives is paid out in wages and salaries, that any dollars which are taken off the top of the Great Northern's revenues would similarly be distributed, and that is a mathematical conclusion, then, that for every dollar less of revenue they get there is 50 cents less wages paid out, am I correct about that, Mr. Emme?

A. Yes, sir.

Q. And your opposition to the complaint is to the extent that reductions in clerical employees and other non-operating employees of the type that you represent, to the extent that those jobs will be reduced, if at all, is that right?

A. There is no question about it in my mind.

Q. I am asking you what your position is?

[fol. 3371] A. That is my position.

Q. Who brought this case to your attention and asked you to intervene in the case?

A. There was no one asked me to intervene.

Q. Who brought it to your attention?

A. The railroad told us about the case. They said they thought we might be interested. They gave us notice.

Mr. Maguire: That is all.

Mr. Torinus: That is all. Thank you, Mr. Emme.

Exam. Dishman: The witness is excused.

(Witness excused.)

MARK HOUSTON was sworn and testified as follows:

Direct examination.

The Witness: My name is Mark Houston, H-o-u-s-t-o-n. I am president of System Federation No. 7, Railway Employees Department, American Federation of Labor, comprised of the five so-called shop crafts organizations, and the firemen and oilers organization, representing these classes of employees of the Northern Pacific Railway Company. This is a full time position with headquarters at 432 Brener Arcade Building, St. Paul, Minnesota.

I have been authorized by the aforesaid organizations and eight other non-operating railway labor organizations to appear in this hearing in their behalf in opposition to the [fol. 3372] complaint of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company versus Spokane, Portland and Seattle Railway Company, Oregon Electric Railway Company, and Oregon Trunk Railway, I.C.C. Docket No. 31466.

The average number of employees of the Northern Pacific Railway represented by the organizations in whose behalf I am appearing is 20,111, this figure being based on the average number of employees, taken from the monthly report of employees service and compensation to the Interstate Commerce Commission for the year 1954.

The interest and concern of the non-operating labor organizations arises because of the possibility and also the probability of loss of traffic and revenue to the Northern Pacific Railway from opening up additional routes over the Milwaukee Railroad and a consequent loss of their jobs by Northern Pacific employees.

Exhibit 47, submitted by W. G. Webb, shows on page 2 that the Northern Pacific handled 26,631 cars in connection with the Spokane and Portland and Seattle on which it received nearly 11 million dollars in freight revenue. According to this exhibit the Milwaukee Railroad could handle this traffic if it wins this case. If any substantial part of this traffic is taken away from the Northern Pacific this will mean a loss of operating revenue dollar received by the Northern Pacific and a reduction of employees.

We understand that at least 50 per cent of each revenue [fol. 3373] dollar received by the Northern Pacific is paid in salaries and wages to its employees, and over the last four-year period the fluctuation has been less than one per cent. It follows that any reduction in the freight revenue here involved would directly result in a proportionate loss to Northern Pacific employees. We believe it is safe to say that a large majority of the non-operating employees who would be affected by such a forced reduction have at least several years of seniority rights, and it does not seem fair or equitable to us that the value of the seniority they have worked to acquire should be destroyed, for the only apparent reason that the Milwaukee Railroad desires at this time to increase its operating income.

We respectfully request that in determining where the public interest lies in this case the Commission give consideration to what has been stated.

That is all.

Exam. Dishman: Are there any questions, Mr. Torinus?

Mr. Torinus: I have no questions.

Exam. Dishman: Mr. Maguire?

Mr. Maguire: Yes.

Cross examination.

By Mr. Maguire:

Q. It is your theory, then, Mr. Houston, that since, statistically speaking, 50 cents out of every dollar in revenue is expended in wages and salaries, any reduction in revenue carries with it a corresponding reduction in wages and [fol. 3374] salaries, is that it?

A. That is my understanding over a period of many years, that is what occurs when there is a reduction in operating revenue, that there follows in almost every case a reduction in the number of employees.

Q. In exact proportion to the reduction in revenue?

A. I could not state that positively. Sometimes, I believe, it is more than in proportion to the reduction of the revenue.

Q. In other words, it has been the policy—

A. (Interrupting) I can think of no case where I would say it was less.

Q. What is the average income, annual income, of the employees whom you represent?

A. I do not have the exact figures, sir, but—

Q. (Interrupting) Just in round figures.

A. I would say in the neighborhood of $3,600 per annum.

Q. Do you wish the Commission to understand that, for example, the operating revenue of the Northern Pacific, say that in the year 1955, it should be $7,200 less than it was in 1954, that one of the employees whom you represent would be cut off the payroll? Let's get it down to its simplest.

A. I don't believe they would cut it that fine, no.

Q. The finest to which they would cut it is something that you and I can't speculate about, is it?

A. That is correct.

[fol. 3375] Mr. Maguire: That is all.

Exam. Dishman: The witness is excused.

(Witness excused.)

Mr. Maguire: Pardon me, while Mr. Houston is still in the room, could I ask one more question?

Exam. Dishman: All right.

By Mr. Maguire:

Q. There was one question I overlooked, Mr. Houston. Were you requested by the Northern Pacific or the Great Northern to intervene in this case?

A. It was suggested by the office of the chief of personnel of the Northern Pacific, it was suggested, called to my

attention, that this could have probably, if the Milwaukee were successful in their complaint, that it would very directly affect employment in the organizations that I represent here today.

Q. That was the chief of personnel of the Northern Pacific who made that statement?

A. Not the chief of personnel personally.

Q. But the word came from him?

A. By his authority, no doubt. It was called to my attention by the assistant supervisor of wages who handles many of the non-operating cases.

Mr. Maguire: Thank you very much.

Exam. Dishman: Witness excused.

(Witness excused.)

[fol. 3376] Mr. Rockwood: I will recall Mr. Ehlen.

GEORGE F. EHLEN resumed his testimony as follows:

Direct examination (continuing).

By Mr. Rockwood:

Q. Mr. Ehlen, at the hearing yesterday afternoon, at the close of the hearing, you finished, I believe, a discussion of the affairs of the Holden Lumber Company and the testimony of Mr. Holden who testified at the June 1954 hearing in this case.

Have you compiled some information relating to the business of the Kell Lumber Company?

A. I have.

Q. And were you present during the testimony in this case of Mr. Ed Kellenberger, whose testimony begins at page 498 of the transcript?

A. Yes, I heard his testimony and I have since read the transcript.

Mr. Rockwood: I would like to have marked for identification as Exhibit No. 81 exhibit entitled "Showing Destination Territory of Carload Shipments of Forest Products loaded by Kell Lumber Company."

Exam. Dishman: That will be Exhibit No. 81.

(Defendant's Exhibit No. 81, Witness Ehlen, was marked for identification.)

Mr. Rockwood: This exhibit was distributed yesterday [fol. 3377] afternoon to other parties.

By Mr. Rockwood:

Q. Is this Exhibit 81 the exhibit prepared by you relating to the business of Kell Lumber Company?

A. It is.

Q. Will you please explain what you show in this exhibit?

A. Page 2 of this exhibit shows the destination to which the shipments of the mill of Kell Lumber Company moved in the year 1954. There was a total shipped from the mill of 248 cars, of which 155 cars were diverted in transit and 93 cars apparently sold firm. I reached that conclusion from the fact that these 93 cars were not diverted in transit. I have subdivided the data on the top of the page between shipments for which Kell Lumber Company was the consignor, the shipments for which Lovegren Lumber Company was the consignor, the shipments for which George R. Wicker was the consignor, and the shipments for which others than the three named were consignors. The line for percentages at the end of the first table on the page shows the percentage of the total of the 248 cars which went into territories defined in the column headings.

On pages 3 and 4 I show further details with respect to the 92 cars for which Kell Lumber Company was consignor. Of those 55 cars were billed to Minneapolis, Minnesota, and were diverted to the states shown. Four cars were billed to Minnesota Transfer, Minnesota, and were diverted to the states shown. Others were billed as indicated in the tabulations and diverted to the states shown. [fol. 3378] On page 4 I show the destinations by states of those cars billed by Kell Lumber Company, which were apparently sold firm, which included 26 of the total of 92 billed out by Kell Lumber Company as consignor.

Page 5 shows similar information for the 43 cars for which Lovegren Lumber Company was consignor. 39 of the 43 Lovegren cars were billed as shown and were di-

verted in transit to destinations in the states shown. 43 cars were apparently sold firm in the four states shown.

On page 6 I have shown similar data for the four cars which were shipped in the name of George R. Wicker, two of these cars were diverted in transit and two were apparently sold firm.

Q. That concludes your comments on Kell Lumber Company, does it?

A. It does.

Q. Were you present during the testimony of Mr. W. M. Wasser whose testimony begins at page 610 of the record, relating to the shipments of shingles from the mill of Wasser Brothers at Rainier, Oregon?

A. Yes, I have heard the testimony and I have read the transcript.

Q. Have you made an analysis of the shipments by Wasser Brothers of Rainier, of any periods?

A. Yes, I have made an analysis for the years 1953 and the year 1954.

Mr. Rockwood: I would like to have marked for identi-[fol. 3379] fication as Exhibit No. 82 a single page statement, which has also been distributed to the parties.

Exam. Dishman: All right.

(Defendant's Exhibit No. 82, Witness Ehlen, was marked for identification.)

Mr. Rockwood: This is headed showing destination territory of carload shingles forwarded by Wasser Brothers from Rainier.

By Mr. Rockwood:

Q. Will you proceed and tell us what you have shown in this Exhibit 82, Mr. Ehlen?

A. This exhibit shows for the years 1953 and 1954 the total shipments of shingles of the Wasser Brothers Mill at Rainier, Oregon, and the destination territory to which those shipments moved. This exhibit shows that Mr. Wasser's principal destination of shingle is at Wasco, California.

Mr. Maguire: I move that be stricken. The figures will speak for themselves. That is an argumentative statement.

Exam. Dishman: Well, that may be stricken, the figures will speak for themselves.

By Mr. Rockwood:

Q. Concerning the 54 cars out of the 83 shipped in the year 1953 to California and 63 cars out of a total of 95 shipped to California in 1954, will you tell us whether Wasser Brothers could have shipped those to California over any route involving the Milwaukee?

A. He could not.

Q. Or any route including the Milwaukee if the Milwau-
[fol. 3380] kee were successful in this case?

A. The Milwaukee could not participate in the traffic to California if they were successful in this case.

Q. How were these shipments handled according to your analysis, that is, as firm shipments or transit shipments?

A. Our investigation of the movement shows they moved from point of origin to the final billed destination, and from that information it indicates that they were firm orders.

Q. Were any of these cars diverted in transit?

A. None.

Q. Were you present, Mr. Ehlen, when Mr. Lowell Thompson testified at the June 1954 hearing in Portland relating to rates on garnet abrasives?

A. Yes, I was present and heard his testimony, and I have read the transcript of his testimony.

Q. His testimony, as we all recall, related to westbound rates from Idaho to Astoria, Oregon. Have you made any investigation with regard to a through rate to permit shipment by Mr. Thompson of his product to Astoria, Oregon?

A. Yes.

Q. Will you tell us what that investigation showed?

A. Chairman Watson of the North Pacific Coast Freight Bureau, under his Docket NC 3760-S, issued December 18, 1953 placed on the docket a matter submitted by Mr. R. C. Sanders, general freight agent of the Milwaukee, by his let-
[fol. 3381] ter dated December 15, 1953, relating to rates on garnet rock, ground or not ground, from Emerald Creek, Idaho, to Astoria. Therein it was stated that present rates

were a combination over Portland, using factor of 31 cents, minimum 60,000 pounds to Portland, and class rates beyond Portland.

The submission by Mr. Sanders as quoted by Mr. Watson stated, application states, "that the navy has been advertising for bids for a large quantity of sand blasting material for use at the Tongue Point Naval station at Astoria."

Mr. Maguire: Just a moment, Mr. Ehlen, pardon the interruption.

Mr. Examiner, I don't believe that the statements by a common carrier placing a matter on the docket can have any bearing upon this case. The real question is, if Mr. Ehlen is finally leading up to it, may be what was done about the rate, whether a through rate was put in, but I think this question of reading excerpts from correspondence is merely padding the record here and doesn't add anything to the case.

Exam. Dishman: Are you leading up to what was done?

Mr. Rockwood: Mr. Examiner, we are trying to paint a picture here and this is a part of it, to identify this application on the North Coast docket with the trouble which Mr. Thomas thought he was faced with, and it ties the two things in together.

Mr. Maguire: Thompson you mean, don't you?

Mr. Rockwood: No, Lowell Thomas. Excuse me, Mr. Thompson, I misspoke.

[fol. 3382] Exam. Dishman: It is Thompson all the way through, isn't it?

Mr. Rockwood: Thompson.

Exam. Dishman: Do you have much of this preliminary data?

Mr. Rockwood: No, very little.

Exam. Dishman: Proceed.

A. I think we ended at the Tongue Point Naval station at Astoria, but that he was unable to secure any of the business on the present combination rates, and in a further note it is stated, "For information of chairman and members applicant is Idaho Garnet Abrasive Company, Fernwood, Idaho."

This matter so submitted by the chairman indicates that the applicant's shipping point was Emerald Creek, Idaho. Thereafter the Bureau considered the docket and offered a rate of 36 cents subject to Ex Parte 175 increases, minimum 80,000 pounds, via Milwaukee to Spokane and thence S. P. and S., subject to confirmation of movement.

The reference subject to confirmation of movement indicates that the rate was offered subject to evidence to be presented by the applicant that there would be a movement under the rate if published. So far as the docket is concerned nothing was ever done further by the applicant and since there was no confirmation by him that the rate would be used if published the rate was not published.

Mr. Thompson is his testimony indicated—

Mr. Maguire (interrupting): Just a moment, indicates or [fol. 3383] says, which?

Mr. Rockwood: Says.

The Witness: Well, he says he would not be satisfied with a rate higher than 26 cents, which, so he stated, was the rate from his shipping point to Seattle.

A. I have made a comparison of the 36-cent rate which was offered with some other rates published by the Milwaukee for single line haul.

In Agent Watson's North Pacific Coast Freight Bureau Tariff 2-L, ICC 862, item 1955, is a rate from Emerald Creek, Idaho, to Seattle on garnet rock over the single line of the Milwaukee of 26 cents plus Ex Parte 175 increases, minimum 60,000 pounds.

The distance from Emerald Creek to Seattle is 369.8 miles.

Mr. Maguire: Pardon my interruption, Mr. Ehlen.

Now, I think we are going to get into a Section 1 rate case discussion, and I don't believe it is necessary for the witness to go into a defense of the proposals of the S. P. and S. of 31 cents, as I recall it.

Mr. Rockwood: Proposal of the North Pacific Coast Freight Bureau in a matter submitted by the Milwaukee.

Mr. Maguire: And an agreement of the S. P. and S. which was the only carrier interested.

Mr. Rockwood: They concurred, they went along.

Exam. Dishman: What is the purpose of this line of testimony?

[fol. 3384] Mr. Rockwood: The testimony of Mr. Thompson was section one testimony in that he was complaining that a rate higher than 26 cents for the traffic which he wished to ship was too high. His testimony was section one testimony, and I agree with Mr. Maguire and we are simply rebutting the testimony presented by him as to the reasonableness of the rate of 31 cents which was offered to him.

Exam. Dishman: Well, of course, his testimony and the testimony that you are introducing here would not necessarily be accorded a lot of weight in the determination of the issues in this proceeding.

Mr. Rockwood: That is right but—

Mr. Maguire (interrupting): I don't wish to interrupt Mr. Rockwood.

But if they wish to pad the record—I will withdraw.

Mr. Rockwood: We are padding when they allow their witnesses to testify about section one.

Exam. Dishman: Let's make it as brief as possible.

A. In the same item is a rate of 31 cents from Emerald Creek, Idaho, to Bellingham, subject to Ex Parte 175 increase, minimum 65,000 pounds for a distance of 487.1 miles. Thus on those two single line hauls there is a difference of 5 cents in the Bellingham rate over Seattle for an increase in distance of 97.3 miles.

By Mr. Rockwood:

Q. Go ahead.

A. In the same item is a rate from Emerald Creek to [fol. 3385] Portland of 31 cents subject to Ex Parte 175 increases minimum 60,000 pounds to apply over the Milwaukee to Chehalis, Washington, thence Great Northern, Northern Pacific, or Union Pacific. Astoria on the branch line of the S. P. and S. is 99.7 miles from Portland. For the additional distance of 99.7 miles beyond Portland the rates which were offered Mr. Thompson of 36 cents were 5 cents in excess of the published rate to Portland.

Following the pattern described above for the increase of 5 cents for the 97.3 miles greater distance which Bellingham is over Seattle, it would appear that the 36 cent rate which was offered to him was reasonable, being 5 cents over the Portland rate to the destination which is 99.7 miles beyond Portland.

Mr. Thompson's testimony goes to the reasonableness of the rate which was offered him rather than the fact that he was deprived of a joint through rate via Milwaukee, Spokane, S. P. and S. to Portland.

Mr. Maguire: Just a moment. I move that last sentence be stricken, Mr. Examiner, as argumentative.

A. To Astoria.

Exam. Dishman: Yes, that may be stricken.

By Mr. Rockwood:

Q. I think that finishes with Mr. Thompson, and will you proceed, Mr. Ehlen.

Were you present during the testimony, at the June 1954 hearing, of Mr. L. H. Palmer, whose testimony begins at page 297 of the record, and Mr. Ray Bailey, whose testi- [fol. 3386] mony begins at page 316 of the record, relating to westbound rates on grain originating at points on the Milwaukee in Montana?

A. Yes. I heard their testimony and have since read the transcript of their testimony.

Q. What comments have you to make on the testimony of the two witnesses?

Mr. Maguire: Just a moment. That question, Mr. Examiner, calls for the comments of the witness. And if there is any factual matter to be developed it can be developed by examination as to the factual matter, but calling for comments from a witness, and particularly, I think in view of the fact that we have constantly been obliged to strike argumentative portions of the witness' testimony, I believe gives him a little bit too much latitude.

Exam. Dishman: Could you bring out the evidence more directly?

Mr. Rockwood: Surely.

By Mr. Rockwood:

Q. Tell us what the S. P. and S. is willing to do in connection with the apparent complaints of—well, they were complaints all right—of Mr. Palmer and Mr. Bailey.

A. The S. P. and S. is willing to publish joint through rates and routes on grain from Montana points to points on the S. P. and S. if and when a bona fide application is submitted to either the Chairman of the North Pacific Coast Freight Bureau or to me.

Q. The discussion of those witnesses brought in the sta- [fol. 3387] tion of Astoria, Oregon. What is located at Astoria?

A. There is located at Astoria the flour mill of Pillsbury's Mill, Inc., and a grain elevator through which the North Pacific Grain Growers handle some grain, but that organization has no cooperatives in the State of Montana.

Q. Have you ever received a request from Pillsbury Mills for rates from Montana points for use by Pillsbury Mill at the Astoria mill?

A. We have never received an application from them.

Q. If Pillsbury made an application and indicated that it would use the rate what is the S. P. and S. willing to do?

A. We would be willing to give the application favorable consideration and publish their rate providing the Milwaukee would concur.

Q. When I refer to Montana points I intended to confine the question to Montana points on the Milwaukee. Do your answers have in it that limit, that origin points were Montana points on the Milwaukee?

A. It would be Montana points on the Milwaukee. Those are the points from which we would be willing to publish rates via Spokane and the S. P. and S. to points on our railroad.

Q. Do you know whether the Milwaukee has any joint through rates with any carrier from origins on the Milwaukee in Montana on grain to any principal consuming markets in the State of Oregon or Washington served by the S. P. and S.?

[fol. 3388] A. Rates are now in effect at Milwaukee points via Marengo and the Union Pacific to the Union Pacific

territory between Marengo and Portland, also to Portland, or to Vancouver, Washington, and to points on the Southern Pacific.

Q. What are the principal consuming markets on grain, the largest consuming markets for grain in Oregon and southern Washington?

A. The two largest points to which grain moves for milling purposes and for export are Portland, Oregon, and Vancouver, Washington. However, there are no milling facilities at Vancouver. That is strictly a grain storage elevator for export and for domestic shipments.

Q. All right. Have you made an analysis of the westbound movement of corn to points on the S. P. and S. for any period?

A. Yes, analysis was made for the year 1953.

Q. What does that analysis show as to the extent of the movement, as to the destination of the movement?

A. In the year 1953 the S. P. and S. terminated 770 carloads of westbound corn, of those 734 cars terminated at Portland, five terminated at terminal number four, within the switching limits of Portland, and 20 terminated at Vancouver, Washington, which is 759 cars of the total. All but 11 cars terminated at points which are served by the Great Northern, Northern Pacific, Union Pacific, and Southern Pacific. Two cars terminated at Pasco, Washington, which is served by both the Northern Pacific and S. P. and S. Only nine cars of the total of 770 cars terminated at points [fol. 3389] served solely by the S. P. and S. as follows:

Astoria, Oregon, three cars; Scapoose, Oregon, one car; North Plains, Oregon, two cars; Fisher, Washington, two cars; Centerville, Washington, one car.

Thus 761 cars out of the total of 770 cars terminated at points on the S. P. and S., which can be reached over through routes from midwestern origin points which do not involve movement over the S. P. and S.

The 759 cars which terminated at Portland and terminated at Terminal No. 4 and Vancouver, all of which are served by the Union Pacific, could have been handled over the long haul route of the Milwaukee via Marengo and thence the Union Pacific, or would be subject to competition of corn, which could have been purchased in the midwest

and moved over the Milwaukee Marengo route. From this it follows that the Milwaukee could have solicited—

Mr. Maguire (interrupting): Just a moment. That is argumentative, Mr. Examiner.

Mr. Rockwood: It isn't at all argumentative. The statement he is about to make, it is a fact as to what the Milwaukee could have done.

Exam. Dishman: You mean it is competitive?

The Witness: Yes, sir.

Exam. Dishman: It would be open to competitive solicitation?

The Witness: Yes, sir.

[fol. 3390] Exam. Dishman: All right, proceed.

A. From this it follows that the Milwaukee could have solicited from its existing route via Marengo and the Union Pacific carloads of corn competitive with the 759 cars which, in fact, moved over the S. P. and S.

The 770 cars which I have described were to points on the S. P. and S. proper, exclusive of the Oregon Trunk and the Oregon Electric. In addition to those cars 22 cars terminated on the Oregon Trunk and 118 cars terminated on the Oregon Electric in 1953. Every one of those cars terminated had a station served also by the Union Pacific or the Southern Pacific. For every one of those cars which the Milwaukee could have solicited to move over the S. P. and S. from Spokane had the route which it now seeks been available, the Milwaukee could have solicited a movement of corn from midwest to move over the presently available route of the Milwaukee via Marengo, thence Union Pacific, to Union Pacific destinations or thence Union Pacific to Southern Pacific, and Southern Pacific to Southern Pacific destinations, thus out of a total of 910 cars of corn terminated at all S. P. and S. system stations in 1953 only nine cars were not faced with the competition of midwest corn which could have moved over the existing long haul route of the Milwaukee to Marengo thence Union Pacific.

By Mr. Rockwood:

Q. On corn was there any competitive route available via Terry, Montana?

[fol. 3391]. A. There are rates in effect from Milwaukee stations via Milwaukee to Terry, Montana, thence Northern Pacific to points on the S. P. and S. system.

Q. Is that applicable from Sioux City, Iowa?

A. That is applicable from Sioux City.

Q. And under that route the Milwaukee would have had a haul, though not as long as the haul to Spokane?

A. It would.

Mr. Rockwood: This, Mr. Examiner, is one we overlooked distributing last night, exhibit showing number of carloads of coal and so forth.

Exam. Dishman: That will be identified as Exhibit No. 83.

(Defendant's Exhibit No. 83, Witness Ehlen, was marked for identification.)

By Mr. Rockwood:

Q. Were you present during the testimony of Mr. S. H. Clark at the June 1954 hearing, his testimony beginning at page 326 of the record, and the testimony of Mr. James L. Shaw, at the same hearing, his testimony beginning at page 451 of the record?

A. I was, and since the hearing I have read the transcript of their testimony beginning at the pages you referred to.

Q. These two gentlemen testified with respect to rates and routes on westbound coal from Montana origin points on the Milwaukee. Have you made a study of the records of the S. P. and S. to determine the extent to which coal from Montana origin points and other origin points moves [fol. 3392] to S. P. and S. destinations?

A. Yes, I have.

Q. Just a minute. Is this Exhibit 83 the statement that you refer to?

A. It is.

Q. Now will you proceed to state the facts with respect to movement concerning which Mr. Clark and Mr. Shaw testified?

A. Mr. Clark testified with respect to rates from Roundup, Montana, located on the Milwaukee, Red Lodge, located on the Northern Pacific, and Sheridan, Wyoming, located

on the Chicago, Burlington & Quincy. In the year 1954, for which I made a study, there was not a single carload of coal moved from any of those points to points on the S. P. and S. system. Mr. Clark, in particular, indicated that he felt that the Red Lodge and Sheridan mines had some advantage over the Roundup mines in reaching Oregon and Washington territories served by the S. P. and S.

Q. I am going to ask you to refrain from reading the next sentence because I know that Mr. Maguire would object strenuously.

Is there any movement of any sources of coal to S. P. and S. destinations?

A. Yes, I have prepared a statement which shows the total number of cars in 1954 to all points on the S. P. and S. system. In that year there was a total of 181 cars. Of these 153 cars were from Utah origin points and 28 cars were from origins in the State of Pennsylvania. It is quite [fol. 3393] obvious from this statement that such limited quantities—

Mr. Maguire (interrupting): I object to that as argumentative.

Exam. Dishman: All right, just eliminate the argument.

By Mr. Rockwood:

Q. Do you know from your personal experience and observation which is the superior coal, the Montana or Utah coal?

A. The Utah coal is much superior to the Montana coal, and that is, no doubt, the reason none moved.

Mr. Maguire: Just a moment, I object to that.

By Mr. Rockwood:

Q. Are the rates from Utah lower or higher than the rates which were cited in this record for Montana?

A. The rates from Utah are lower to our territory than from Montana in most instances.

Q. Have you checked the rates published by the Milwaukee from Roundup, Montana, to any destinations in Oregon and Washington? Not the measure of the rates. Have you

checked to determine whether the Milwaukee joins with any carrier in the publication of joint rates?

A. Yes, the Milwaukee joins the Union Pacific in rates from Roundup to East Portland, Oregon, and to points on the Union Pacific between Marengo and East Portland. No rates are published to central Oregon points on the Bend line, and there are no rates published to Portland proper via the Marengo Gateway.

Q. You say there are no rates to Portland proper. Are there any rates to Vancouver—I don't know that I understood you—under that Marengo route?

[fol. 3394] A. No rates were published to Vancouver either.

Q. From your personal knowledge what are the principal coal consuming destinations in the S. P. and S. territory and including Vancouver, Washington?

A. The principal coal consuming points there are Pasco, Washington, and it is very minor because only 23 cars moved to that point in 1954.

The other principal consuming point is Vancouver. Most of the coal terminating at Vancouver is for the U. S. Government.

Q. What installation is there at that point?

A. They have a veterans' hospital at that point.

Redmond received 20 cars in central Oregon and other than those three points very little coal terminates on points of the S. P. and S. system.

Q. Do you happen to know what the Pennsylvania coal was that moved all the way across the country to S. P. and S. destinations?

A. Some anthracite coal is used by the aluminum reduction plants, and there is an occasional car of smithing coal that moves from Pennsylvania.

Q. Aluminum reduction plants at Vancouver?

A. Yes, sir.

Q. Except for that is there any consumption of anthracite coal that you know of in this territory, in the Oregon and Washington territory?

A. None that I know of.

[fol. 3395] Mr. Rockwood: I ask there be marked for identification as Exhibit 84 a statement of some seven pages,

the first page of the statement showing number of carloads of apples and so forth.

Exam. Dishman: That will be marked as Exhibit No. 84.

(Defendant's Exhibit No. 84, Witness Ehlen, was marked for identification.)

Mr. Maguire: Off the record, Mr. Examiner.

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

By Mr. Rockwood:

Q. Were you present and did you hear the testimony of Mr. A. J. Jaynes of Haley-Neeley Company of Sioux City, Iowa, who testified at the June hearing and whose testimony begins at page 574 of the record?

A. Yes.

Q. What commodities did Mr. Jaynes discuss in his direct examination?

A. He discussed apples, cherries, pears, potatoes, and onions. He mentioned prunes.

Q. On his direct examination?

A. On his direct he did not mention prunes. On the cross-examination he mentioned prunes. On direct the commodities that I have named are the ones that he testified to.

Q. Will you speak a little more sharply because I think the reporter has trouble getting some of your answers, Mr. Ehlen.

[fol. 3396] A. All right, sir.

Q. Have you prepared from official sources statement of the production of the five crops, apples, cherries, pears, potatoes, and onions, in the states of Oregon and Washington?

A. Yes, I have available two releases of the United States Department of Agriculture, Agricultural Marketing Services, Washington, D. C., both dated March 30, 1954, which show the production by carloads of many varieties of fruits and vegetables. From those documents I have prepared an exhibit summarizing the production in the year of 1953 in each county in Oregon and Washington.

Q. And that is embodied in what has been marked as your exhibit No. 84?

A. It has been.

Q. Proceed, will you please, with an explanation of Exhibit No. 84.

A. In this exhibit I have shown for the five crops that I named and the quantities which moved by rail of the commodities produced in each of the counties of the two states. The government releases show carloads from each shipping point. The data in the columns A, B, and D, of each of the pages of this exhibit, are taken directly from the governmental releases. I have extended the data in the official releases to show in column C the railroads which serve each of the shipping points named, and I have then carried the data forward to the totals in column E which [fol. 3397] I computed.

Q. Will you please comment on the first page relating to apples, or, rather, in deference to Mr. Maguire, will you please tell us what data you have included on that page?

A. The states of Washington and Oregon produced and shipped by rail during the year 1953 19,839 carloads of which 864 cars moved from Oregon stations and 18,975 cars moved from Washington stations.

Mr. Maguire: May I ask that the next question be revised so as to omit the argumentative nature.

By Mr. Rockwood:

Q. What are the principal producing areas in the states of Washington and Oregon?

A. The apple production in the two states come from three districts.

The Chelan district in Washington, served solely by the Great Northern, which shipped 7,419 carloads; the Okanogan district in Washington, served solely by the Great Northern, which shipped 4,600—

By Mr. Rockwood (interrupting):

Q. Wait a minute, Okanogan shipped how many?

A. 4,679 carloads; and the Yakima district in Washing-

ton, served for the most part jointly by the Northern Pacific and Union Pacific, which shipped 6,520 carloads.

The total from these three districts was 18,618 carloads out of a grand total for the two states of 19,839 carloads. [fol. 3398] Q. What stations of the S. P. and S. are included as origin points on apples?

A. Bingen, White Salmon in Klickitat County and Underwood, Washington.

Q. Does this exhibit show Underwood?

A. This exhibit does not show Underwood but Underwood is a non-agency station on the S. P. and S. Railway and all shipments are billed from Bingen-White Salmon.

Mr. Cockrum: Is that also in Klickitat County?

The Witness: Yes, sir.

By Mr. Rockwood:

Q. Bingen-White Salmon is one station on the S. P. and S., is it?

A. Yes, sir.

Q. And Underwood is a locality in the immediate vicinity of Bingen-White Salmon?

A. It is.

Q. And carloads which actually move out of Underwood are billed at what station?

A. They are billed at Bingen-White Salmon.

Q. So in this statement 44 carloads out of Klickitat County at the shipping point of Bingen-White Salmon would include apples actually moved out of Underwood?

A. It would.

Q. Spokane is shown here as origin point, shipping point, served by the S. P. and S. on eastbound apples. Would the [fol. 3399] S. P. and S. get any haul out of Spokane, shipments?

A. It could not participate in a haul on eastbound shipments.

Q. Have you made an analysis of your own records to show the movement of apples from S. P. and S. stations in 1953?

A. I have.

Mr. Rockwood: I would like to have marked for identification Exhibit No. 85, a statement, the heading of which is "Statement Showing Number of Carloads of Apples that Originated at Bingen-White Salmon."

Exam. Dishman: That is one page?

Mr. Rockwood: That is correct.

Exam. Dishman: That will be identified as Exhibit No. 85.

(Defendant's Exhibit No. 85, Witness Ehlen, was marked for identification.)

By Mr. Rockwood:

Q. Is this exhibit which has been marked No. 85 the statement of shipments originated by the S. P. and S. in 1953?

A. It is.

Q. Will you please describe what you have shown in this exhibit?

A. Well, my statement shows a total of 48 cars of apples shipped from Underwood and Bingen-White Salmon to the states shown, whereas the government statement shows 44 cars.

I cannot reconcile the figures exactly, but, as I will show later whereas the government is four cars under my statement for apples, the government is over the statement which [fol. 3400] I will show for pears to the extent of three cars.

Mr. Maguire: I would ask that the next sentence not be read as it asks for speculation of the witness.

Exam. Dishman: Leave out argument and speculation.

By Mr. Rockwood:

Q. What is the difference between the total government figures for pears and apples and the total of your figures for pears and apples?

A. One car.

Q. Have you any comments in connection with this exhibit 85 as to the destination territory?

A. Out of the 48 cars shown in the exhibit 16 cars terminated in the states of Oregon and Washington, and the balance of the cars moved to transcontinental points, not a single car moved to a point in South Dakota.

Q. All right, now come back to your Exhibit 84 and tell us what you have shown on page 2, which apparently relates to cherries.

A. This page of the exhibit relates to fresh cherries shipped by rail from Oregon and Washington stations. It does not show a single shipment of any fresh cherries from a point other than Kennewick, Washington, served by the S. P. and S. That station is served by the Northern Pacific and Union Pacific and the S. P. and S. but only 14 cars out of a total of 1,179 cars moved from that station in that year.

So far as the state of Oregon is concerned the only cherry producing areas which move their shipments by rail is the [fol. 3401] territory in Hood River, Umatilla, Wasco County, served by the Union Pacific.

Mr. Maguire: May I ask a question for clarification.

You mean as shown by the exhibit, Mr. Ehlen?

The Witness: From my experience and my own knowledge we have not moved any fresh cherries from our producing area, which is the Willamette Valley south of Portland, for many years.

Mr. Maguire: I am talking about—

By Mr. Rockwood (interrupting):

Q. As a matter of fact, these figures on this page are all taken from the government report to which you refer, are they not, Mr. Ehlen?

A. The figures are all taken from the government report.

Q. And your description of the data necessarily assumes the government reports as substantially correct?

Mr. Maguire: I am not trying to raise a controversy here, I just want to make it clear that the witness' remarks are based upon what is shown in these government reports as reproduced in his exhibit.

Mr. Rockwood: That is right.

By Mr. Rockwood:

Q. Now tell about what, if any, movement of fresh cherries there is on the S. P. and S.

A. We have not moved any fresh cherries in freight

service, to my knowledge, for the last two years. We have made a definite check of the last two years and even before that time I do not recall cherries moving from our producing area, which is the Willamette Valley.

[fol. 3402] Q. How do any cherries produced, fresh cherries produced, in the Willamette Valley move by rail?

A. The last cherries that we moved by rail from the Willamette Valley was many, many years ago, and they moved in express service.

Q. Express refrigerator cars?

A. Express refrigerator service.

Q. Do you have any express service on the Oregon Electric?

A. No, we don't.

Q. Turn to page 3 of your Exhibit 84 which apparently relates to pears and describe the data that you have shown on that sheet.

A. The page shows the Department of Agricultural figures for the two states for carload shipments of pears. The principal pear producing areas in the two states are Jackson County, Oregon, served by the Southern Pacific, Hood River County, Oregon, served by the Union Pacific, the Chelan district in Washington, served by the Great Northern, and the Yakima district in Washington, served by the Union Pacific and the Northern Pacific. The only stations served by the S. P. and S. from which pears were shipped by rail was Bingen-White Salmon from which, as the statement shows, 244 cars moved out of a total of 9,265 cars from the two states.

Q. Do you have a statement which you have prepared showing shipment of pears over the S. P. and S. in the year 1953?

A. I have.

Mr. Rockwood: I will ask to have marked for identifica-
[fol. 3403] tion Exhibit No. 86, I believe.

Exam. Dishman: That is right. It will be so identified.

(Defendant's Exhibit No. 86, Witness Ehlen, was marked for identification.)

Mr. Rockwood: It is a single page exhibit, with the caption beginning, "Statement Showing Number of Carloads of Pears".

By Mr. Rockwood:

Q. Will you please describe the data shown in this exhibit?

A. This exhibit shows 241 carloads of pears shipped from Underwood and Bingen-White Salmon for the year of 1953.

Q. How does that compare--

A. (Interrupting) As compared with 244 cars shown on the government's data.

Q. All right, proceed with your comments on this exhibit.

A. I have commented before concerning apples on this discrepancy between our figures and government figures for carloads. This exhibit shows the destinations by states to which our pear shipments moved in 1953.

Mr. Maguire: I would ask that the next sentence be not read.

Exam. Dishman: Well, omit it, if it is argument.

By Mr. Rockwood:

Q. Did the S. P. and S. in the year 1953 move a single carload of pears to any of the states, Idaho, Montana, North Dakota, South Dakota, Nebraska, or Kansas?

A. None.

Mr. Rockwood: Mr. Examiner, I am going to proceed [fol. 3404] to discuss potatoes next and that will be a little longer than these last two.

Exam. Dishman: Have you finished with Exhibit 86?

Mr. Rockwood: Yes.

Exam. Dishman: We will take a short recess.

(Short recess.)

Exam. Dishman: The hearing will be resumed, gentlemen.

By Mr. Rockwood:

Q. Turn to page 4, will you please, of your Exhibit No. 84, which, according to the heading, relates to potatoes.

Do you have some further information relating to potato production other than the exhibit?

A. I have a further Department of Agriculture release relating to potatoes. This one is dated February 15, 1955, and is issued by the United States Department of Agriculture, Agricultural Marketing Service, Agricultural Estimates, 306 United States Court House, Portland 5, Oregon.

Mr. Rockwood: I would like to have marked for identification as Exhibit No. 87.

Exam. Dishman: Exhibit 87.

(Defendant's Exhibit No. 87, Witness Ehlen, was marked for identification.)

By Mr. Rockwood:

Q. This Exhibit 87 is the release you just referred to, is it?

A. Yes, but I think I misstated that the date was February 15. It should be a release dated February 1, 1955.

[fol. 3405] Q. It is a release dated February 1, released February 18, 1955, this is correct, isn't it?

A. Yes.

Q. Turning to the reverse side of this sheet for the tabulation at the bottom of the page, 11 western states shows a total production crop 1954, 115,194,000 bushels. Have you made a calculation to determine what percentage the Idaho production was of the total production in 11 western states?

A. The Idaho production is 36.5 per cent of the total production of the 11 states.

Q. I call your attention to the Oregon figure in that same column of 13,200,000 bushels. Have you made a calculation similarly to determine what percentage that is of the total production in the 11 western states?

A. That production is 11.5 per cent of the total production for the 11 western state.

Q. All right, now turn back, will you please, to pages 4 and 5 of your Exhibit No. 84 and tell us what that exhibit shows with respect to shipments from S. P. and S. stations in Washington.

A. No potatoes were shipped from stations served by the S. P. and S. in Washington except 126 carloads from Kennewick served by the S. P. and S., Northern Pacific and Union Pacific, and 59 carloads shipped from Pasco, served by the Northern Pacific and S. P. and S. The total of these two is 185 carloads out of a total of 8,345 carloads from the State of Washington.

[fol. 3406] Q. Did any of those 185 cars move over the S. P. and S.?

A. None of them.

Q. Now proceed to the data on these pages for Oregon. What are the principal producing areas for potatoes in the State of Oregon?

A. The three principal producing areas for potatoes in the state of Oregon are Malheur County, served by the Union Pacific, Klamath County, served by the Great Northern and Southern Pacific, and the three counties of Crook, served by the City of Prineville Railroad, which connects with the Oregon Trunk and the Union Pacific, and the Deschutes and Jefferson Counties served by the Oregon Trunk and Union Pacific.

The total from the three counties which I last named, Crook, Deschutes, and Jefferson, was 2,961 carloads.

The only other shipments from Oregon, from any stations served by the S. P. and S., were the nine carloads from east Portland in Multnomah County served by the Southern Pacific, Union Pacific, and S. P. and S., and a total of 102 carloads from Lane, Linn, and Marion Counties in the Willamette Valley, served by the Oregon Electric and S. P. and S.

Q. Just a minute. Served by the Oregon Electric and what railroad?

A. And the Southern Pacific.

Q. Instead of S. P. and S.?

A. That is right.

[fol. 3407] Mr. Rockwood: I ask that there be marked for identification as Exhibit No. 88—

Exam. Dishman (interrupting): Exhibit No. 88.

(Defendant's Exhibit No. 88, Witness Ehlen, was marked for identification.)

Mr. Rockwood (continuing): —a single page, the caption beginning Statement Showing Number of Carloads of Potatoes that originated at Stations on the Oregon Trunk.

By Mr. Rockwood:

Q. Did you prepare this exhibit which has been marked as No. 88, Mr. Ehlen?

A. I did.

Q. Will you tell us what data you have included in this exhibit?

A. This exhibit shows the destinations of shipments handled by the Oregon Trunk Railway from Crook, Deschutes, and Jefferson Counties in the crop year ended August 31, 1954. In that year the Oregon Trunk handled 2,555 carloads, of which 2,499 cars terminated in British Columbia and the states on the Pacific coast, including Nevada and Arizona. Only 56 carloads of the total, or 2.19 per cent, moved to transcontinental destinations.

Mr. Maguire: I request that the argument—

Mr. Rockwood (interrupting): I anticipated it. It is a comment on the contents of the exhibit which would be construed to be argumentative.

By Mr. Rockwood:

Q. In addition to the shipments from the Oregon Trunk did the S. P. and S. originate any other carloads of potatoes [fol. 3408] in the entire calendar year 1953?

A. In addition to these the S. P. and S. system handled only 45 carloads of potatoes in the entire calendar year of 1953, of these 43 originated at Salem, Oregon, and moved to a single destination in Texas, and two carloads originated at Beaverton, Oregon, and moved to a California destination.

Q. Will you proceed with your comments with respect to pages 4 and 5 of Exhibit 84?

A. I pointed out that the Oregon Trunk in the crop year ended August 31, 1954, handled 2,555 carloads. I pointed out, as shown on page 4 of Exhibit 84, the total cars moved out of the three counties, Crook, Deschutes, and Jefferson, amounted to 2,961 cars. Thus the Union Pacific out of this

territory handled only about 400 carloads. The major market for Oregon potatoes out of the Deschutes district is, as my exhibit shows, California, and because of the rat application to California the great bulk of the movement into California is Oregon Trunk, Great Northern, via Bieber, B-i-e-b-e-r, and the Western Pacific beyond.

Q. Have you any governmental publication which shows the carloads of potatoes unloaded at Sioux City, Iowa?

A. I have.

Q. Will you give us a reference to the document?

A. This document is published by the United States Department of Agriculture, Agricultural Marketing Services, [fol. 3409] Fruit and Vegetable Division, Marketing Northwestern Potatoes, Summary of the 1953-54 season, Oregon, Washington, Idaho, by Carl J. Hansen, 312 U. S. Courthouse, Portland 5, Oregon, and is dated July 1954.

Q. Does that document show the origins of carloads of potatoes unloaded at Sioux City, Iowa?

A. It does.

Q. Read across and tell us the origins by states as they are shown.

A. The document shows a total of 780 carloads of potatoes unloaded during 1953, and they originated in the following states:

1 car from Alabama, 53 cars from Arizona, 260 cars from California, 4 cars from Colorado, 149 cars from Idaho, 1 car from Maine, 74 cars from Minnesota, 36 cars from Nebraska, 150 cars from North Dakota, 23 cars from Oregon, 3 cars from Texas, 11 cars from Washington, 1 car from Wisconsin, 14 cars from other states, making a total of 780 cars.

Mr. Maguire: Off the record.

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

Mr. Rockwood: Could there be any objection to stipulating that in evidence?

I have no objection. It relates to a great deal of material which isn't relevant to this case at all, relating to other

territories, not involved in any way. We only have one copy of that.

[fol. 3410] Mr. Cockrum: It will be all right if I can look at it.

Exam. Dishman: May Mr. Cockrum look at that data?

Mr. Rockwood: Oh, yes. If he will just bear with me a minute until we are finished.

Exam. Dishman: All right.

By Mr. Rockwood:

Q. You have 260 cars from California, 149 from Idaho, 150 from North Dakota, and 74 from Minnesota?

A. Yes, sir.

Q. Which totals, if my arithmetic is correct, 633 cars?

A. 633 cars.

Q. What is the potato producing area in Dakota and Minnesota, do you know?

A. Red River Valley.

Q. On both sides of the Red River in the two states?

A. It is.

Q. So that those figures are figures from the same producing area, the total combined of Minnesota and North Dakota?

A. I would call it the same producing areas.

Q. What is the relative time of the California potatoes in the market and the potatoes out of Idaho and Oregon, do you know?

A. Kern County, California, is the early producing area. They move potatoes from Kern County via the various routes. As I recall it, we have had a movement in the past through Portland during the months of May or June, I think.

Q. What time of the year do the Idaho and Oregon pota-[fol. 3411] toes come into the market?

A. The Idaho and Oregon potatoes come into the market approximately the same time, between August 15 to September 1. The real early potatoes we don't participate in the movement. Our movement takes place around September 15.

Q. Do you personally know what time the Red River Valley potatoes get into the market?

A. No, I don't know the exact time, but I was raised in Minnesota and I know the territory pretty well. We used to start harvesting potatoes in Minnesota, which part of the Red River Valley is in northern Minnesota, around September 1.

Q. Do you know anything about the rate situation which faces the Idaho producer as compared with the Oregon producer in moving into this territory in Iowa and Minnesota and surrounding territory?

A. The rate on potatoes from central Oregon points served by the Oregon Trunk Railroad to Mitchell and Sioux City, Iowa, is $1.11 per hundred, subject to the Ex Parte increases. The rates from the Idaho points, such as Idaho Falls, Blackfoot, Idaho, is 92 cents.

Nyssa, Oregon, which is in Malheur County adjoining the state of Idaho, the rate from Nyssa to Mitchell is 96 cents.

Q. Do you know what the rate from Red River Valley is, from points in the Red River Valley is, as to a point to such as Sioux City?

[fol. 3412] A. No, I do not know. I did not check that rate.

Q. All right, come back to your Exhibit No. 83, I believe.

Mr. Maguire: Exhibit 84?

By Mr. Rockwood:

Q. No, Exhibit 84. All these Oregon Trunk points, as has been said in the record many times; are common with the Union Pacific. Do you know whether rates from Oregon Trunk points apply via the Union Pacific, Marengo, thence east over the Milwaukee?

A. They do.

Q. All right, go back to page 6 of your Exhibit No. 84, pages 6 and 7, apparently relating to onions. Do any onions originate in '53 on the S. P. and S. stations in Washington?

A. No onions originated on the S. P. and S. stations in Washington.

Q. What are the principal producing areas for onions in the State of Oregon?

A. The Willamette Valley is the principal producing point in Oregon. I would say mostly north of Salem to Forest Grove.

Q. What county of the state produces more than any other single county in the State of Oregon of onions?

A. Malheur County is the largest producing area. It produced 1,903 carloads in the year 1953.

Q. The total being 3,108?

A. Yes, sir.

Q. And the next is in the Willamette Valley, it shows [fol. 3413] the station Brooks, 737 cars. What railroad serves Brooks?

A. Brooks, Oregon, is exclusively served by the Southern Pacific.

Q. At that point it is the Oregon Electric. Where is the Oregon Electric located with respect to the Southern Pacific track? Is Brooks on the east or west side of the river?

A. Brooks is on the west side of the river, as I recall it.

Q. Are you sure of that? If there is any question about it, let's check. Brooks, Oregon, is it on the east side or the west side of the Southern Pacific?

A. It is on the main line, it is on the middle line of the Southern Pacific.

Q. Is that east of the Willamette River or west of the Willamette River?

A. It is west of the Willamette River.

Q. I am going to have you check that.

A. I will have to check that.

Q. Is Brooks on the line to Salem?

A. It is on the line to Salem.

Q. Is Salem on the east or the west side of the river?

Mr. Maguire: Why don't you get a map on that?

Exam. Dishman: Aren't there map exhibits here that would show that?

A. It is on the east side of the river.

By Mr. Rockwood:

Q. All right, and at that point—Brooks is on the east side of the river?

[fol. 3414] A. Yes.

Q. At that point is the Oregon Electric on the east side or the west side of the river opposite Brooks?

A. The Oregon Electric is also on the east side of the river.

Q. Does the Oregon Electric handle any onions out of Brooks?

A. It does not.

Q. How many carloads of onions originated on the S. P. and S. system in Oregon in the year 1953?

A. 83 carloads.

Q. Where did they move, do you know?

A. One carload moved from Forest Grove to Arkansas, two cars from Mulloy, Oregon, to Missouri, nine cars from Forest Grove to California, six cars from Mulloy to California, 22 cars from Forest Grove to Oregon points, one car from Mulloy to Oregon points, 40 cars from Forest Grove to Washington points, two cars from Mulloy to Washington points.

Out of the total of 83 carloads only three cars moved to transcontinental destinations.

Q. You discussed the five commodities, apples, pears, cherries, potatoes, and onions, which were mentioned by Mr. Jaynes in his direct examination.

On cross-examination do you recall that he mentioned at pages 597 and 598 of the record cabbages from Gresham, prunes from Tigard, berries from Tigard. Do you remember those?

A. I remember those, yes, sir.

[fol. 3415] Q. The Agricultural Department releases that you used as a basis for your exhibit information, does it show figures for carload shipments from Oregon of cabbages?

A. It does.

Q. Where did those cabbages originate?

A. Three cars at Portland and 19 cars at Troutdale, Oregon, a point served exclusively by the Union Pacific.

Q. Can you tell us whether or not in that year any cabbages moved from Gresham, Oregon?

A. The government report does not show any cars from Gresham, Oregon.

Q. On what railroad is Gresham, Oregon?

A. On the Portland Traction Company.

Q. What does your release show about the movement of prunes from Oregon?

A. The release shows a total of 938 carloads of plums and fresh prunes, 338 of which originated—

Q. (Interrupting) Three hundred thirty what?

A. (Continuing) —331 of which originated at Freewater, Oregon, and 607 carloads at Milton, Oregon.

Q. By what railroads are those stations served?

A. It is on the Union Pacific.

Q. Did any prunes, fresh prunes, or plums move from any S. P. and S. stations that year?

A. None.

[fol. 3416] Q. Now, you mentioned berries. Are berries covered by that release that you have referred to?

A. Berries are not covered by that release.

Q. Are fresh berries handled in any freight service from any S. P. and S. point at the present time?

A. No, because of the highly perishable nature of the berries they are usually shipped in refrigerator car express service.

Q. Do you ship, move, berries after any processing? Do you ship berries in any other form than fresh berries?

A. Oh, we have a large tonnage of frozen berries, fruits, and vegetables that are produced in the Willamette Valley.

Q. No mention has been made of peaches by Mr. Jaynes, but can you tell us what the production and movement by rail of peaches is from any Oregon stations?

Mr. Maguire: Just a moment. If there is no mention be n made by any witness for the complainant in the case I can't see the relevancy of going into peaches.

Mr. Rockwood: Oh, I am perfectly willing to pass it. I am willing to pass that one.

Exam. Dishman: All right.

Mr. Rockwood: Now, if the Examiner please, I am going to discuss with Mr. Ehlen a large volume of exhibits which were distributed among counsel at one of the final days of the hearing last week.

Exam. Dishman: You want them all numbered now?

[fol. 3417] Mr. Rockwood: Let's number the whole batch.

Exam. Dishman: All right.

Mr. Rockwood: The next exhibit number, as I understand, will be—

Exam. Dishman (interrupting): Number 89.

Mr. Rockwood: They have all been stamped in the lower right-hand corner S. P. and S. and so forth, can we proceed, the exhibit stamped S. P. and S. No. 1 will be 89.

S. P. and S. 2 will be 90.

S. P. and S. 3 No. 91.

S. P. and S. 4 No. 92.

S. P. and S. No. 5 is 93.

S. P. and S. No. 6 is 94.

S. P. and S. No. 7 is 95.

S. P. and S. No. 8, 96.

S. P. and S. No. 9, 97.

S. P. and S. No. 10, 98.

S. P. and S. No. 11, 99.

S. P. and S. No. 12, 100.

S. P. and S. No. 13, 101.

S. P. and S. No. 14, No. 102.

S. P. and S. No. 15, 103.

S. P. and S. No. 16 is Exhibit 104.

S. P. and S. No. 17 is Exhibit No. 105.

Then there is a final one number 18 which is Exhibit No. 106.

[fol. 3418] (Defendant's Exhibits Nos. 89 through 106, inclusive, Witness Ehlen, were marked for identification.)

Mr. Rockwood: I wonder, Mr. Examiner, if in the testimony of the witness he may refer to these exhibits by their stamped numbers at the bottom of the first page, they having been identified in the record with the numbers given to them for the record. It will to a great degree facilitate discussion rather than to refer to these by a rather cumbersome numbering system. Is that satisfactory to you?

Exam. Dishman: You mean—

Mr. Rockwood (interrupting): For instance in referring to Exhibit No. 89, may he refer to that as S. P. and S. No. 1?

Exam. Dishman: Will that be confusing?

Mr. Cockrum: It will be confusing.

Mr. Rockwood: All right, we will refer to them as they have been marked.

By Mr. Rockwood:

Q. Have you prepared a series of exhibits, Mr. Ehlen, showing the routes presently available of handling business to and from points served by the S. P. and S. system?

A. Yes, I have a series of exhibits which for convenience have been designated as S. P. and S. 1 to S. P. and S. 18 in the lower right-hand corner. These have now been marked for identification as Exhibits 89 to 106, inclusive.

Q. Describe, will you please, the general make-up of these exhibits.

[fol. 3419] A. This series of exhibits falls into six general sub-divisions, each one of which follows the same pattern. Exhibit 1, 2—

Q. (Interrupting) We have to refer to those by numbers, 89, 90, 91.

A. Exhibits 89, 90, and 91, relate to commodities generally.

Exhibits 92, 93, and 94 relate to wool and mohair.

Exhibits 95, 96, and 97 relate to routes on lumber eastbound to destinations west of the Missouri River.

Exhibits 98, 99, and 100 relate to routes on lumber eastbound to points east of the Missouri River but west of official territory.

Exhibits 101, 102, and 103 relate to rates on lumber eastbound to official territory and the southeast.

And Exhibits 104, 105, and 106 relate to routes on lumber eastbound to destinations in eastern Canada.

Each one of these six sets of three exhibits is further subdivided and all follow the same pattern.

The first exhibit in each set relates to routes from and to points on the S. P. and S. system in which the S. P. and S. lines are named as participating carriers.

The second exhibit of each set relates to routes of the Southern Pacific to and from points which are common with the S. P. and S. system.

The third exhibit in each set relates to Union Pacific routes to and from points which are common with the S. P. and S. system.

[fol. 3420] What I have attempted to do in compiling exhibits is, one, to show routes available over the S. P. and

S. system lines; two, to show in the two subsequent exhibits in each set the routes which are available to shippers today in competition with the S. P. and S. system lines; and, three, to show further to what extent the shippers have service over through routes without using the S. P. and S. system lines or using the S. P. and S. system lines only as an intermediate carrier.

Q. All right, will you take the first one of these series, Exhibit 89, and describe the make-up of that exhibit?

A. This exhibit is again divided into three sections: the first covering stations on the S. P and S. proper, extending from pages 2 to 14; and the second relating to Oregon Electric stations, extending from pages 15 to 19; and the third relating to Oregon Trunk stations extending from pages 20 to 23.

The remainder of the exhibit from page 24 to page 36 contains explanations of reference markings, notes, and abbreviations.

I point out here that the first exhibit in each of these six sets which I have described is similarly broken down to show routes for S. P. and S. stations proper, for Oregon Electric stations, and for Oregon Trunk stations.

Q. All right, now come on back to Exhibit 89 and explain first the S. P. and S. section.

A. I will explain first the S. P. and S. section. In the S. P. and S. section I have listed all stations on the S. P. [fol. 3421] and S. proper, including the Astoria branch from Portland to Astoria, the Keasey branch therefrom, and the main line from east Portland to south Cheney, the first station west of Spokane, and have included the Goldendale branch.

On page 2 opposite the station Seaside on the Astoria division as an example, is a statement of route numbers which apply to and from Seaside. For example Route 99-D applies to and from that point.

Again at page 7 is a description of each route over which rates apply to and from S. P. and S. Points. On page 8 you will notice the destination Route 99-D followed by a description of that route.

The general pattern of all routes to and from S. P. and S. points on the commodities covered by the tariffs listed

on page 1 of the exhibit is to preserve to the parent lines of the S. P. and S., the Great Northern and Northern Pacific, the long haul on the traffic involved. Routes which I will call the standard routes include the S. P. and S. to or from one of five junctions, Portland, Willbridge, Oregon, Vancouver, Pasco, and Spokane, Washington, and one or the other of the parent lines between those junctions and the eastern junctions of the parent lines with their connections.

These routes apply both eastbound and westbound. What I will call the standard routes include routes via Portland to or from a point east, west, or south thereof, via a parent [fol. 3422] line through Everett, Washington, in connection with the Great Northern or through Auburn, Washington, in connection with the Northern Pacific, or through Pasco, Washington, with interchange from the Northern Pacific or through Spokane for interchange with either the Great Northern or Northern Pacific.

Standard routes will also include routes to or from Oregon Electric stations via the Great Northern through Bieber, California, included in the second section of this exhibit relating to Oregon Electric stations. Also included in what I call the standard routes is the route applicable on canned goods from Vancouver via S. P. and S., Oregon Trunk to Bend, thence Great Northern to Bieber and its connections.

In this exhibit there are a few routes that do not appear to be consistent with the normal policy of the S. P. and S. to join only in routes which will give the parent lines their long haul. There is another group of routes applying to and from east Portland as a main S. P. and S. station on which Mr. Engel, E-n-g-e-l, of the Milwaukee has commented.

Q. Will you please explain the situation with respect to the routes that you just referred to, to and from East Portland?

A. East Portland is a station on the east side of the Willamette River in the City of Portland. It is not reached by either the Great Northern or Northern Pacific. The only connection between the tracks of the parent lines on the

west side of the river and the station of East Portland is [fol. 3423] over what is known as the Steel Bridge in Portland which is owned by the Southern Pacific and the Union Pacific. The S. P. and S. has contract rights to use that bridge for access to trackage which it owns in East Portland; but neither the Great Northern or Northern Pacific has operating rights over that bridge, consequently for Great Northern or Northern Pacific business coming into Portland for termination at East Portland we have published these routes which include the S. P. and S. as a line haul carrier between Portland and East Portland on the Northern Pacific and Great Northern business. As a matter of fact, the S. P. and S., while included as a line haul carrier in the routes, performs nothing other than switching service between the east side of the river and the west side of the river. These routes in which the S. P. and S. is so named as line haul carrier to and from Portland include those Numbers 99-A, 99-K, 99-N, 99-P, 99-Q, and 99-FF.

Q. Those, in fact, those East Portland routes, are they, in fact, departures from what you have termed standard practice?

A. They are not departures from what I have described as standard S. P. and S. practice to give the parent lines their long haul.

Q. Now you said there were in this Exhibit 1 a few routes which appear to be departures from the standard policy; Exhibit No. 89. Will you refer now to the instances in this Exhibit 89 wherein the routes, as you say, appear to be departures from the standard policy of the S. P. and S. to participate only in routes which give the parent lines [fol. 3424] the long haul?

A. The first one is shown on page 9 of Exhibit 89 and is designated as Route 99-J, applying S. P. and S. Portland, Union Pacific through Granger; and column 4 is the application of that route. It applies only to and from points located on the Union Pacific, taking transcontinental group G, I, or J rates, as shown in transcontinental tariff 5, agent W. J. Prueters, I.C.C. 1563. Route 99-J does not apply in connection with rates published in T C F.B. Tariff 52-H, Agent W. J. Prueters, I.C.C. 1534, covering livestock.

The Astoria or Seaside portion of the S. P. and S. system was acquired, a portion of that line was acquired, from the Astoria and Columbia River Railroad, on July 8, 1911. At that time the rates applied to points on the Union Pacific and its connections beyond.

In 1915 these routes beyond the Union Pacific were eliminated from the tariffs and the rates were confined to Union Pacific local territory in groups G, I, or J. There are some points along the Missouri River that were competitive with other railroads but they could not be eliminated because of the intermediate application.

The cancellation of the routes beyond the Union Pacific was contested by the West Coast Lumbermen's Manufacturers' Association, et al., and is reported in 45 I.C.C. 230. The cancellation of the rates was found justified and the [fol. 3425] complaint was dismissed. It covered forest products as well as all other commodities that moved from the so-called S. P. and S. Astoria Line.

I believe that is the complete explanation of Route 99-J.

Q. What is your next one of that category, that is, routes which appear to be departures from the standard?

A. The next route is 99-M, as shown on page 10. This route applies S. P. and S. Portland or East Portland, Oregon, Southern Pacific, via El Paso, Texas.

The route applies from S. P. and S. stations, Willbridge, Oregon, to Pasco, Washington, inclusive, also the Goldendale branch.

It is restricted to the movement of apples and was published to eliminate Fourth Section departures. However, we also included the Goldendale branch points when the departures were taken care of, as the Northern Pacific published rates from Yakima to the California points via Northern Pacific, Pasco, S. P. and S., thence the Southern Pacific.

Mr. Maguire: Pardon the interruption. Are you talking about Route 99-M at the moment?

The Witness: M, yes.

A. The route also applies from S. P. and S. stations Levey to south Cheney, but it is also restricted to the fruits.

Mr. Maguire: Could I ask a question for clarification there?

Exam. Dishman: Yes.

Mr. Maguire: Opposite 99-M, Mr. Ehlen, is the note—[fol. 3426] this is on page 10 of your exhibit 89—"See flag reference shown in connection with Route No. 99-M opposite respective S. P. and S. stations shown on pages 2 to 6, inclusive." Does that flag reference contain—I haven't been able to locate it while you are talking here—does it contain the explanations which you have just given, that is, as to application?

The Witness: I will point that out to you, Mr. Maguire. That flag reference is shown on page 28, and it explains the rates on the apples and vegetables as I have described them. Flag reference 124.

Mr. Maguire: Oh, yes, I see. Oh, your flag reference, on pages 2 to 6, precede the route number, is that what it is?

The Witness: Well, yes. If you will turn to page 5, you will note that the reference 124 precedes the route number 99-N.

Mr. Maguire: Thank you, that explains that to me.

By Mr. Rockwood:

Q. All right, Mr. Ehlen, will you proceed.

A. 99-T is the next route that I wish to refer to, and that is shown on page 11 of my exhibit. This route applies from the Astoria division, S. P. and S. stations East Portland, also S. P. and S. stations Portland, Oregon, to South Cheney, inclusive, including the Goldendale branch.

We have nothing in our files that show why this route was published. It applies, as you will note from column 4 on page 11 to or from points located in transcontinental ter-[fol. 3427] ritory, and only in connection with eastbound rates on fruits and vegetables in section one of Transcontinental Freight Bureau Tariff 44-L, Agent W. J. Prueters, I.C.C. No. 1558. The route has a limited application to Soo Line points in Minnesota, North and South Dakota.

The route was originally published in Northern Pacific Tariff 1960, I.C.C., 5084, effective September 9, 1912, and was carried over to the Transcontinental Tariffs.

The next route I wish to refer to is Route 99-TT, on page 12 of my exhibit. This route applies from the Astoria divi-

sion, also from S. P. and S. stations East Portland, Oregon, to Finley, Washington, inclusive, including the Goldendale branch. The route applies S. P. and S., Pasco, Washington, Northern Pacific, Spokane, Washington, [illegible] I., Eastport, Idaho, Canadian Pacific, North Portal Saskatchewan Portal, North Dakota, thence Soo Line. It applies only on fruits and vegetables as I described in connection with Route 99-T and is a carry-over from the Northern Pacific tariff to the transcontinental tariff.

Mr. Maguire: Mr. Examiner, may I ask one more question for clarification?

Exam. Dishman: All right.

Mr. Maguire: I notice, Mr. Ehlen, you have a reference mark 71 in parenthesis opposite 99-TT, and when you turn to page 25 of your exhibit which is reference marked 71 it says at the heading "Application is For Westbound Traffic. [fol. 3428] For Eastbound Traffic Use Reverse Application." With that in mind, if you will turn back to page 12, do you mean that the westbound rates apply generally within the framework of note 71 but that the eastbound rates only apply in connection with fruits and vegetables? I just want to get that clear.

The Witness: I believe you will find that this reference 71 in connection with other routes in the tariff, as I understand it, Mr. Maguire, the Routes 99-T and 99-TT, apply only on its eastbound shipments of fruits and vegetables.

Mr. Maguire: That is just what I want to get clear. It does not apply on westbound traffic?

The Witness: It does not apply on westbound traffic.

Mr. Maguire: All right, thank you.

The Witness: In fact, that is my understanding as close as I have checked the tariff, and I have checked it out as closely as I could.

A. The next route I refer to is 99-UU on page 13 of my exhibit. This route applies S. P. and S. Portland, Union Pacific through Granger, Wyoming.

It is restricted as shown in column 4, applying only on shipments of paper and paper articles destined to points on the Union Pacific in Wyoming, west of Corlett Junction, Wyoming, including shipments stopping at points on

the Oregon Electric to complete loading as provided for in North Pacific Coast Freight Bureau tariffs 63-P, Agent W. R. Watson's I.C.C. No. 878. This route was published [fol. 3429] in connection with the Union Pacific upon a request from the Crown Zellerbach Paper Company in order to consolidate shipments from Camas, Washington, with shipments of paper that they produce at a mill at Lebanon, Oregon.

The next route I wish to refer to is route 99-VV. This route is shown on page 13. It applies S. P. and S. Portland, Great Northern Bieber, California, Western Pacific Salt Lake City, Utah, D. & R. G. Western via Orestod, Colorado, to Denver, Colorado.

This route applies only in connection with shipments of grain or grain products originating at points in transcontinental groups H or N, as shown in T.C.F.B. Freight Tariff 5, Agent W. J. Prueters, I.C.C., 1563, and moving via Denver—

By Mr. Rockwood (interrupting):

Q. Mr. Ehlen, you are reading now from the material in columns 3 and 4 opposite 15 in this Route 99-VV?

A. Yes, sir.

Q. I don't think it is necessary for you to read that into the record, it is already in. Do you wish to make any comments on it other than are as contained in Exhibits 3 and 4?

A. Yes, I do. This route was published upon a request of the Pillsbury Flour Mills. In order for them to transit grain at their Sacramento plant and forward to Astoria at the through rate, in order to move that product to Astoria for export, the routing was already available via the Southern Pacific, however, they also desired the inside Bieber route made available.

[fol. 3430] Q. Was that one of the routes put in, as you described yesterday, after conference with the parent line traffic officials?

A. It was.

Q. That is one of your examples?

A. It is one of the examples.

Q. All right, what is your next one?

A. The next route is 99-WW, also shown on page 13. It applies S. P. and S. Portland, Oregon, Great Northern, Bieber, Western Pacific Salt Lake City, Utah, and D. & R. G. Western via Orestod, Colorado. This route was published in the tariff upon a request of the Colorado Milling and Elevator Company to move grain from stations on the Moffat division of the D. & R. G. Western to Astoria, with transit at Grand Junction, Colorado, or Salt Lake City, Utah, or any other intermediate point where they have mills. The Pillsbury Mills, Inc., were also in a position to utilize this at Sacramento as a final destination Astoria.

Q. Is that in the same category as the preceding route?

A. It is.

Q. All right, do you have another one?

A. The next route I wish to explain is Route 99-XX.

Mr. Maguire: I am awfully sorry to interrupt you, Mr. Ehlen.

When you say in the same category, is that as to permits or in the same category in that the parent lines had to be consulted, Mr. Rockwood?

Mr. Rockwood: What I was referring to was the cate-[fol. 3431] gory to the extent it was put in after conferences that were discussed with the parent line traffic officials.

Mr. Maguire: I assumed that is what you meant.

A. Route 99-XX, also shown on page 13 and continued on page 14, applies S. P. and S. Portland, Great Northern, Bieber, California, Western Pacific Stockton, California, A. T. and S. F. Albuquerque, New Mexico, Belen, New Mexico, or Orla, O-r-l-a, Texas.

This route also applies to Astoria only and was published for Pillsbury Mills in order for them to transit grain at their Sacramento plant and forward the product to Astoria at the through rate for sale in their export trade.

By Mr. Rockwood:

Q. Is that in the same sense as I used the word category as the two preceding routes?

A. It is.

Mr. Maguire: May I ask a question, Mr. Ehlen, for clarification?

Exam. Dishman: All right.

Mr. Maguire: Were all of these handled about the same time or in different times?

The Witness: Well, I would have to estimate that, Mr. Maguire. Possibly within a year's time. It developed just as Pillsbury found a market for a low grade flour. It was explained to me that they desired to blend with flour produced at their Astoria Mill in order to sell this blend of flour to the export trade.

[fol. 3432] Mr. Maguire: Thank you.

By Mr. Rockwood:

Q. What is your next so-called non-standard route?

A. 99-YY, shown on page 14. This route applies S. P. and S. Wishram, Oregon, Oregon Trunk to Bend, Oregon, Great Northern Bieber, California, Western Pacific Salt Lake City, Utah, D. and R. G. Western via Buena Vista, Colorado, thence to Cannon City, or Pueblo, California.

Q. Colorado?

A. Colorado, pardon me.

Also S. P. and S. Wishram, Oregon Trunk Bend—

Q. (Interrupting) You are just reading from Exhibit 1 as it is shown under the second block 99-YY on page 14, that is the other application?

A. That is right.

Q. All right.

A. This route applies only from Vancouver, Washington. It was published on application from the California Packing Corporation who operate a plant at Vancouver, Washington, served by the S. P. and S., and it only applies on canned or preserved foodstuffs. The California Packing Corporation desired to forward shipments of canned fruits and vegetables from their Vancouver plant to their California plants for labelling and consolidation in transit.

Q. What about 99ZZ, is that of the same general nature, [fol. 3433] is the explanation the same?

A. Yes, the explanation is the same. There is an expiration on this routing that I think I should explain. 99YY

has a reference mark 77 preceding it, and a reference mark 93. The 77 reference states, "Expires with September 10, 1954, unless sooner cancelled, changed or extended." The same reference is shown in connection with reference mark 93. These two reference marks have been extended to expire September 10, 1955, and the extension is published in Supplement No. 7 to Transcontinental Freight Bureau 5, W. J. Prueters, I.C.C. 1563.

Q. Does that conclude your explanation of the so-called non-standard routes so far as the S. P. and S. stations proper are concerned?

A. It does.

Q. Just one question going back to that Route 99-ZZ. Is that an expiration date, do you know?

A. That has an expiration date of September 10, 1955.

Q. And it is not so indicated in the exhibit?

A. It is not.

Mr. Cockrum: Is that also a non-standard route?

The Witness: Yes, sir.

By Mr. Rockwood:

Q. Your list of Oregon Electric stations begins at page 15 of your Exhibit 89. Are there any so-called non-standard routes applying to and from Oregon Electric stations?

A. No. They are all standard routes, as I have used the term.

[fol. 3434] Q. Now, the Oregon Trunk stations begin at what page?

A. Page 20.

Q. Page 20 of your Exhibit 89. Are there any so-called non-standard stations to and from Oregon Trunk stations?

A. No, those are all standard routes.

Mr. Rockwood: I was going to begin the discussion of Exhibit 90, which is a slight variation from the subjects we have been discussing up to this point.

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

Proceed.

By Mr. Rockwood:

Q. Turn to your Exhibit 90, which is the second in this series of exhibits and describe what you have shown in this exhibit.

A. This exhibit, as I have said, includes a statement of routes available from or to stations on the Southern Pacific which are served in common by the Southern Pacific and the S. P. and S. system lines. An explanation of the routes—

Q. (Interrupting) Examination?

A. An examination of the routes shown on this exhibit will show that in general there are open routes to and from Southern Pacific points through various gateways, including Portland, Ogden, El Paso, and others, and connections beyond to reach substantially all of Trans-continental terri- [fol. 3435] tory designated in Transcontinental Tariff No. 5, Agent Prueters, I.C.C. 1563.

I want to comment particularly on Route 10-K, as shown on Page 2. This route is open to and from all points which are common to the Southern Pacific and the S. P. and S., except Portland and East Portland, Route 10-K is described on Page 5 of Exhibit 2. This route 10-K is the so-called Marengo route and applies Southern Pacific to Portland or East Portland as a junction point with the Union Pacific, thence Union Pacific to Marengo, and thence Milwaukee beyond.

The reason why this route does not apply from East Portland and Portland as origin points apparently is because those stations are served directly by the Union Pacific, and out of those stations as origin points the Southern Pacific would have no haul.

Q. Now turn to Page 5 of that exhibit and explain the circle reference 32 opposite your Route 10-K.

A. Route 10-K has three reference marks preceding it. It has reference mark 32, which is explained on Page 10, reference mark 160 is explained on Page 11, and reference mark 185 is also explained on Page 11.

Q. Is there any further explanation that you think is necessary of any of those reference marks or are they self-explanatory?

A. The westbound rates on all commodities, classes and

commodities named in the tariff on the title page of the exhibit, apply via the Milwaukee to Marengo, Washington, thence Union Pacific.

[fol. 3436] The eastbound rates are restricted to apply via the Marengo gateway to destination territory in the Western Trunk Line territory to points north of the Omaha, Chicago line, and are confined to across lake routes to the official classification territory.

Q. But the westbound routes are all open—

A. (Interrupting) The westbound routes have no restriction.

Mr. Maguire: Could I interrupt for just a moment with, I hope, a clarifying question?

Exam. Dishman: Yes.

Mr. Maguire: When you say to official territory you refer to routes A, B, and C, do you not, which are north of the Ohio and Potomac Rivers?

The Witness: North of the Ohio, you might say north of the Mason-Dixon Line except as far as Indiana is concerned it splits Indiana about in half and the northern half of Indiana the rates would apply by the across lake routes.

Mr. Maguire: I think there are maps showing A, B, and C in the record already, and it refers to those groups, doesn't it?

The Witness: Yes, it refers to A, B, and C.

Mr. Maguire: Thank you.

By Mr. Rockwood:

Q. Does that conclude the discussion of your Exhibit 90?

A. It does.

[fol. 3437] Exam. Dishman: We will recess for lunch until 2 p.m.

(Whereupon, at 12:35 p.m., a recess was taken until 2:00 p.m. of the same day.)

[fol. 3438] AFTERNOON SESSION 2:00 p.m.

Exam. Dishman: On the record.

By Mr. Rockwood:

Q. Mr. Ehlen, you finished your discussion of your Exhibit No. 90. Would you please proceed to describe No. 91, which is the third exhibit in the first series as you described them?

A. Exhibit 91, which again relates to commodities in general, shows the routes available via the Union Pacific to and from Union Pacific stations, served in common by the Union Pacific and any S. P. and S. point.

I want to comment on Route 8A. This route is again the Union Pacific-Milwaukee route via Marengo, as shown on Page 4 of the exhibit. It is subject to conditions described in the Circle 32 reference, explained at Page 9 of the exhibit. And these limitations are the same as those which I described under the Circle 32 reference in connection with the Southern Pacific routes. Route 8A, as it applies to and from Vancouver, is further subject to the Circle 16 reference explained on Page 7.

Q. On Page 4 there is further circled 185 reference under the route 8A. What is that? Will you explain that, please?

A. The explanation of the Circle 185 reference is shown on Page 12 of the exhibit, and the rates from and to Vancouver—I mean the rates from Vancouver on eastbound traffic do not apply via Marengo.

Q. That Circle 185 reference actually applies only to the [fol. 3439] single station, Vancouver, is that right?

A. That is right.

Q. Now starting with your second series of exhibits which you described, being 92, 93, and 94—

A. These three exhibits relate only the rates on wool and mohair.

Exhibit 92 shows the routes available to and from S. P. and S. System points.

Exhibit 93 shows the Southern Pacific routes to and from points common to the S. P. and S. System.

Exhibit 94 shows the routes of the Union Pacific at sta-

tions served in common by the Union Pacific and the S. P. and S. System.

Q. Are there any routes shown in your Exhibit 92 which are not standard routes, as you have used that term?

A. No. Including the East Portland routes, which I have explained, all of the routes I have shown in Exhibit 92 are standard routes.

Q. All right, do you have any further comments on Exhibit 93?

A. Exhibit 93 shows that the Southern Pacific on this traffic holds to itself the long haul through Ogden, Utah, Deming, New Mexico, El Paso, Texas, and Santa Rosa, New Mexico. The Southern Pacific on this traffic does not join in routes via Portland and the Union Pacific or other roads serving Portland.

Q. Now turn to Exhibit No. 94.

A. I want to comment only on Routes 580 and 585, shown [fol. 3440] on Pages 2 and 3 of the exhibit. These two routes are the Union Pacific routes via Marengo, thence Milwaukee. Route 580 gives the Milwaukee the long haul from Marengo or Plummer, Idaho, to Duluth, Minnesota, for handling beyond by the D.S.S. & A.

Q. That is the Duluth South Shore and Atlantic?

A. Yes, sir.

Route 585 gives the Milwaukee the long haul from Marengo or Plummer to Minnesota Transfer for movement beyond via the Soo Line or the long haul all the way from Marengo or Plummer to Manitowoc, Wisconsin, or Milwaukee, Wisconsin, and thence via its connections beyond those points.

Q. Take your next exhibits, which are Exhibits Nos. 95, 96, and 97, and tell us what this series shows.

A. This series relates to rates on lumber eastbound to destinations named in Transcontinental Freight Bureau Tariff 18-P, Agent Prueter's I.C.C. 1474, which, I have said, is destination territory generally west of the Missouri River.

This series follows the pattern of the earlier series which I have described.

Exhibit 95 covering routes from S. P. and S. points.

Exhibit No. 8 covering—

Q. (Interrupting) That is No. 96?

A. No. 96 covering routes from the Southern Pacific in common with the S. P. and S. points.

Exhibit 97 covering routes of the Union Pacific from [fol. 3441] points served in common with the S. P. and S. System.

The routes shown in 95 are all what I have described as standard routes, except those which I will discuss in detail.

First, there are the East Portland routes similar to the East Portland routes which I have described in connection with other exhibits. These are Routes 30AA, 30BB, 30CC, 30DD, 30EE, 30FF, 30GG, 30HH, and 30JJ.

Q. Those that you have pointed out are actually standard routes?

A. They are.

Q. They are the East Portland routes?

A. They are the East Portland.

Q. What routes in the exhibit are not routes which you characterize as standard routes?

A. The routes described in this exhibit which are not standard routes include several which I will describe. The first route is 30H, shown on Page 7 of the exhibit. 30H applies from S. P. and S., Astoria, line points only, and the rates apply to forest products via S. P. and S., Portland, Union Pacific.

The general application of the route is shown in Column 3.

Q. Of Page 7?

A. Of Page 7.

When the Astoria line was acquired in 1911 all of the routes—

Q. (Interrupting) From what carrier?

A. From the Astoria and Columbia River Railroad. All of the routes on lumber and other commodities were sup- [fol. 3442] posed to have been eliminated in connection with lines beyond the Union Pacific.

There are some points which are still in the tariff and should be eliminated. There have been some rates published since that time without our concurrence. The ones that I will mention is a point of Lawrence, Kansas, and there is another point called Remaco, Colorado. The rates to this point were published since the rates were eliminated in the

original tariff after the Astoria and Columbia River was acquired by the S. P. and S.

During the Second World War a small arms plant was built at Remaco, Colorado, and the Denver rate was extended to that point in connection with practically all lines. This docket application and rate advice was evidently overlooked by both the parent lines and the S. P. and S. because the rates were published to that point in error.

The balance of the destination territory shown in that application is mainly to Utah and Colorado points. We have had rates to this territory since the line was taken over, with possibly some additions. However, the territory could not be reached by the Milwaukee, if it was successful in this case.

Q. Except what?

Mr. Maguire: Could I ask a question to clarify this? I am not quite sure about this.

You made mention of Lawrence, Kansas, Mr. Ehlen?

The Witness: Yes.

[fol. 3443] Mr. Maguire: Did you say that Lawrence, Kansas, has since been eliminated or was first eliminated and then restored?

The Witness: No. It is back in the tariff, and we cannot develop why. But it should be eliminated.

Mr. Maguire: Oh, it should be eliminated?

The Witness: Yes, it should be eliminated.

Mr. Maguire: Remaco, Colorado, is the same way? It should be eliminated?

The Witness: Yes.

Mr. Maguire: It just crept back in somehow?

The Witness: The rates to Remaco were published during the Second World War period, and it was an extension of the Denver rates to this particular small arms plant. It was just a matter of rate advice being issued by the Transcontinental Freight Bureau, and usually we have our route elminated when it would short haul either one of the parent lines, the Great Northern or Northern Pacific. It was simply overlooked.

A. The next route I will explain is Route 30I, and that route is confined to the Astoria line of the S. P. and S., as

explained in Column 3. It applies with various exceptions to points on the following lines: C.R.I. & P., Fort Worth and Denver City; C.R.I. & P. in Texas, Fort Worth and Denver City in Texas; L. & A. in Texas; L. & N., in Texas, Mexico, where Route No. 301 is shown opposite respective destinations.

Mr. Maguire: Pardon the interruption. I think you mis-
[fol. 3444] spoke yourself. You meant the T. & N.O. instead of the L. & N.?

The Witness: T. & N.O.

Exam. Dishman: That is set out in the exhibit on Page 7, isn't it, Mr. Ehlen?

The Witness: The rates applied before the S. P. and S. acquired the Astoria and Columbia River Railroad. I cannot explain why they were not taken out of the tariff or that particular route eliminated from the tariff.

A. The next route I will explain is 30J. 30J applies from the S. P. and S. points via Spokane and the Milwaukee and was explained in my Exhibit 28.

By Mr. Rockwood:

Q. That is the route which was the subject of Exhibit 28, which you explained in detail, is that right?

A. Yes, sir.

Q. All right.

A. The Route 30L is similar to 30I, and my same explanation for that route covers this particular route. The route applied when we acquired the Astoria and Columbia River Railroad.

Routes 30Q, 30R, 30S, and 30T apply from the Astoria line and to points on the Union Pacific east of Idaho, east of the Idaho-Wyoming line.

Mr. Maguire: I dislike to interrupt here, but do you mean that all four of those routes apply to points east of the Idaho-Wyoming line?

The Witness: They are confined to Union Pacific sta-
[fol. 3445] tions on the Union Pacific east of Huntington.

Mr. Maguire: You mean the Idaho-Oregon line?

The Witness: Idaho-Oregon line. They are east of Huntington, Oregon.

By Mr. Rockwood:

Q. They apply to points on the Union Pacific east of the Idaho-Oregon line. How far east of the Idaho-Oregon line do they apply?

A. Where they are shown, but they are confined to the Union Pacific points in the Union Pacific territory.

Q. With no right to divert to connections?

A. That's right.

Q. In that respect, are they in any way similar to the Milwaukee routes on your Exhibit 28?

A. They are the same as the Milwaukee routes shown in my Exhibit 28, that is, they are restricted not to apply beyond the Union Pacific.

30U is the next route, and that applies from the Astoria line, S. P. and S., Portland, Union Pacific, and with the exceptions to points on the D. & R.G., Garfield and Western in its Utah territory which could not be reached by the Milwaukee.

30V, as shown, is published to apply S. P. and S., Portland, Union Pacific, Pullman, Colorado, and the Rock Island. That particular route is not shown opposite any destination.

Q. Any station?

A. It is shown opposite the origin stations, but not op- [fol. 3446] posite a destination station. And we have written Mr. W. J. Prueter to eliminate the route and he confirms that it should be eliminated.

Q. Eliminated entirely?

A. Yes, eliminated entirely because it has no application.

Q. All right.

A. 30W is the next route. That route applies S. P. and S., Pasco or Spokane, Northern Pacific, Butte, or Silver Bow, Montana, Union Pacific.

As to its application to Lawrence, Kansas, to Remaco, Colorado, it is the same as explained in connection with Route 30H. The rates in connection with Route 30W in reality have no application, excepting applying via that

route because the rates are higher to the destination territory, that is, Lawrence, Kansas, and Remaco, Colorado, on the Santa Fe than the rates that apply via—they are higher by the Silver Bow Gateway than they are by the Laurel Gateway.

30NN on Page 12 is the next one. Again, this route applies only from the Astoria line, and it applies as shown in the general application in Column 3 to the points in Utah that cannot be reached via the Milwaukee.

Q. Does that conclude your explanation of the Route 30 exceptions?

A. It does.

Q. Are there any other so-called exceptions to the standard routes in this exhibit?

A. There are none other in connection with the 30 series [fol. 3447] of routes.

We have a separate series of routes on Page 3 that apply from the—

Exam. Dishman: Are you still talking about Exhibit No. 95?

The Witness: Yes, still talking about Exhibit No. 95.

A. (Continuing) —that apply to the so-called Keasey Branch of the S. P. and S.

By Mr. Rockwood:

Q. Only from that branch?

A. Only from that branch.

These routes were assigned to the Keasey Branch when it was operated under the United Railways, and the routes have not been changed to the 30 series.

These routes are described beginning on Page 12. Route 33H, referred to at Page 13, is the route in connection with the Milwaukee via Spokane, which I described in connection with my Exhibit 28.

There are some other routes in the 33 series which are non-standard which I will explain.

33I is a route that applies via S. P. and S., Willbridge, Great Northern, Seattle, Washington, thence the Milwaukee Road. That route was published the same time as the

routes from the S. P. and S. line, as explained in my Exhibit 28.

The next route is 33J. This route applies S. P. and S., Portland, Union Pacific, and applies to Union Pacific territory only and will not apply to connections beyond.

[fol. 3448] 33L applies S. P. and S., Portland, Union Pacific to Remaco and Lawrence, Kansas. And the same situation applies to the circumstances under which that route applies as I have previously explained in connection with the S. P. and S. routes.

Beginning at Page 16 are routes applying from the Oregon Electric station. All of the routes shown in this section of the exhibit are standard routes, except Routes 18H and 18I, described on Page 19. 18H applies Oregon Electric, Linnton, Portland or Willbridge, Oregon, S. P. and S., Spokane, Washington, thence Milwaukee Railroad as explained in connection with my Exhibit 28.

Q. That route does not apply from the Santiam Branch, does it?

A. It does not.

Q. Is that the route which is the subject of the matter now pending on the Transcontinental docket?

A. It is.

Q. With respect to Santiam Branch?

A. Yes, it is.

Q. And if that change is made effective, then the Santiam Branch will be subject to this same 18H?

A. Yes.

Q. Will you explain 18I?

A. The next route is 18I. That applies Oregon Electric, Great Northern, thence Seattle, thence the Milwaukee Road. It was published in 1913, as explained in connection with my [fol. 3449] Exhibit No. 28.

Q. Is that route applicable from the Santiam Branch?

A. No, it is not presently applicable from the Santiam Branch, but the instructions that have been issued cover the same application from the Santiam Branch.

Q. All right, do you have any comments on the Oregon Trunk section of this exhibit?

A. On Page 21 is the only route that is nonstandard.

Q. So that we will be clear, the Oregon Trunk section of this exhibit begins at Page 20?

A. Page 20, yes.

On Page 21 the route 21D is a route that applies Oregon Trunk, Wishram, S. P. and S., Spokane, thence the Milwaukee Road, as explained in connection with my Exhibit No. 28.

Q. And are all other routes in this Oregon Trunk section standard routes?

A. All other routes are standard routes.

Q. Turn, please, to your Exhibit No. 96 and describe it.

A. This exhibit, again, is routes of the Southern Pacific from points served in common with the S. P. and S. System to the territory west of the Missouri River, as defined in Transcontinental Freight Bureau Tariff 18-P, Prueter's I.C.C. 1474.

Q. Are there any routes in this exhibit that you think require any special explanation?

A. Yes. On Pages 2 and 3 there is a list of stations, of [fol. 3450] Southern Pacific stations, that are served in common with the Oregon Electric and S. P. and S., opposite which is Route 27V, except the route does not apply from East Portland or Portland because the application from those two points would be via the Union Pacific. The Southern Pacific could not receive a haul eastward over the Union Pacific or the S. P. and S. from those two points.

Q. Three points?

A. Two points.

Q. Portland and—

A. (Interrupting) Portland and East Portland.

Q. Your comments now refer to Route 27V?

A. 27V.

Q. All right.

A. Route 27V applies in connection with Route 7D, which route is via Southern Pacific, Great Northern, Seattle, thence C.M. St. P. & P. or the Milwaukee Road.

Route 27W is via S. P., Portland, in connection with the Northern Pacific, via Tacoma, Washington, thence the Milwaukee Road.

Route 27X applies via Southern Pacific, Portland or East Portland, in connection with Routes 22E via Union Pacific,

Butte, or Silver Bow or Marengo, Washington, thence Milwaukee Road.

Route 22G—

Q. (Interrupting) 22G?

[fol. 3451] A. 27X, but it applies in connection with 22G.

Q. All right.

A. (Continuing) —Union Pacific, Spokane, Washington, Great Northern.

Route 27Y applies from these Southern Pacific points via Portland in connection with Route 30J, which is S. P. and S., Spokane, thence Milwaukee Road.

The rates on lumber from the Willamette Valley points were established as a result of a complaint filed by the Willamette Valley Lumbermen's Association, I.C.C. Docket 9536, and the decision is 51 I.C.C. 250, decided October 22, 1918.

Q. Does that conclude your explanation of this Exhibit 96?

A. It does.

Q. All right, will you proceed now with your Exhibit No. 97?

A. This exhibit is the final one of this series, and it relates to Union Pacific routes from points served in common with the S. P. and S. System to territory west of the Missouri River, as defined in Transcontinental Freight Bureau Tariff 18-P, Prueter's I.C.C. 1474.

Q. Are there any routes in this exhibit on which you think it appropriate to comment?

A. Yes. The stations that are served in common by the Union Pacific and S. P. and S. are shown on Pages 2 and 3.

Route 22E is shown opposite all stations, except Vancouver, Washington, and applies via the Union Pacific, via [fol. 3452] Butte or Silver Bow, Montana, or Marengo, Washington, thence the Milwaukee Road.

Route 22F also applies via U.P., Butte or Silver Bow, Montana, or Marengo, Washington, and the Milwaukee Road.

Q. Now, your next series of exhibits include the three, No. 98, No. 99, and 100, is that correct?

A. Yes, sir.

Q. Will you proceed with your explanation of these?

A. The routes shown in Exhibits 98, 99, and 100 cover routes on lumber eastbound to destinations east of the Missouri but west of official territory, specifically as described in Transcontinental Freight Bureau 28-O, Agent Prueter's I.C.C. 1545.

In Exhibit 98, covering S. P. and S. routes, the East Portland routes, similar to those which I have already described, are 30H, 30P, 30Q, 30R, 30S, 30T, and 30U. All other routes are standard, except those which I shall describe.

Route 30I is shown opposite S. P. and S., Astoria, line points on Page 2.

Q. It applies only from that line?

A. And it applies from only that portion of the line.

This route applies via Portland, Southern Pacific, to the destination territory shown in Column 3 of Page 7.

Mr. Maguire: Off the record, please.

Exam. Dishman: Off the record.

(Discussion off the record.)

[fol. 3453] Exam. Dishman: On the record.

A. The application to the T. & N.O. points was in effect prior to the time that we acquired the Astoria and Columbia River Railroad. The routing to the Louisiana and North West Railway and points on the St. Louis and Southwestern were published as a result of Docket Application 7456, issued December 21, 1926, and were published without our concurrence, and they should be eliminated from the tariff.

By Mr. Rockwood:

Q. That is Continental Freight Bureau Docket?

A. It is the Transcontinental Freight Bureau Docket.

There are some rates to the—the route also applies to some points on the T. & P., and they were published as a result of Transcontinental Freight Bureau rate advice Y-2328 of May 2, 1926, without our concurrence.

The next route I will explain is 30J. 30J applies S. P.

and S., Spokane, thence Milwaukee Road, as explained in my Exhibit 28.

The next route is 30V. This route applies via S. P. and S., Willbridge, Great Northern, Seattle, thence the Milwaukee, and was established in the year 1913 and was explained in connection with my Exhibit 28.

Q. What part of the S. P. and S. does that apply from?

A. That route applies only from the Keasey Branch of the S. P. and S.

Route 30W applies S. P. and S., Portland, Union Pacific, [fol. 3454] and was published without our knowledge and should be eliminated from the tariff.

There are only two stations named in the tariff to which rates apply in connection with Route 30W, that is, Belton, Missouri, and Marino, Missouri—strike that. That is not correct. In the general application, in Column 3, the rates that were published without our knowledge applied to St. L. & S.F. points, Belton, Missouri, through Marino, Missouri, Station Nos. 910 through 939, and Dodson, Missouri, through Edgecomb, Missouri, Station Nos. 940 through 955. There are only two stations in this tariff to which the rates apply to the Union Pacific stations, and they are Council Bluffs, Iowa, and Kansas City, Missouri, and were a carry-over from the acquisition of the Astoria-Columbia River Railroad.

Mr. Maguire: May we go off the record?

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

By Mr. Rockwood:

Q. As to those two Union Pacific points to which the rates do not apply, Council Bluffs, Iowa, and Kansas City, Missouri, do I understand you, Mr. Ehlen, those are carry-overs from the acquisition of the Astoria and Columbia River Railroad?

A. No, that is wrong. These rates apply from the Keasey Branch of the S. P. and S. line, and the rates to the St. L. [fol. 3455] & S.F. points were published without our con-

currence. The rates to Kansas City and Council Bluffs, Iowa, were published on a request of the Central Coal and Coke Company in 1923, I find, and they do not apply beyond the Union Pacific. They apply to the Union Pacific proper.

Q. Central Coal and Coke in 1923 was the then owner of the mill at Vernonia, now owned by what company?

A. The Oregon American Lumber Corporation took over the Central Coal and Coke Company. The lumber mill at that point now is owned by the Long-Bell Lumber Company.

Q. It is the same mill?

A. It is the same mill.

The next routes I will explain are shown on Page 10 and Page 11. There are just two routes to explain there. They are 18H and 18I.

18H applies via Oregon Electric, Linnton, Portland or Willbridge, S. P. and S., Spokane, thence the Milwaukee Road.

18I applies Oregon Electric, Portland or Willbridge, Great Northern, Seattle, thence the Milwaukee Road. That route was published in 1913.

Q. Again, those rates do not apply from the Santiam Branch?

A. They do not apply from the Santiam Branch.

Q. Is your present proposal on the Transcontinental Freight docket such that those routes would be made to apply from the Santiam Branch?

[fol. 3456] A. The instructions cover the application of that same route from the Santiam Branch.

Q. All right, proceed to your Oregon Trunk section of this exhibit, beginning on Page 14.

A. On Page 14—

Mr. Maguire (interrupting): Could I interrupt just a moment here?

Mr. Rockwood: All right.

Mr. Maguire: Just for clarification, your application or your instructions, rather, to the Transcontinental Freight Bureau do not extend to routes through Seattle from the Santiam Branch, do they?

The Witness: Oh, yes, I am sure they do, Mr. Maguire.

Mr. Maguire: If you say they do, that satisfies me.

The Witness: We instructed the same application of rates from the Santiam Branch as we had in effect from the Main Line of the Oregon Electric, rates via Seattle and also via Spokane.

Mr. Maguire: Is that right?

The Witness: I think so.

By Mr. Rockwood:

Q. On this Oregon Trunk section is there any route on which you wish to comment?

A. Route 21D is shown opposite the Oregon Trunk stations on Page 14. It is not shown opposite Wishram because that point is covered by the S. P. and S. application.

The explanation of Route 21D is shown on Page 15. That [fol. 3457] route applies Oregon Trunk, Wishram, Washington, S. P. and S., Spokane, Washington, thence the Milwaukee, and was also explained in connection with my Exhibit No. 28.

Q. All right, now proceed with your discussion of Exhibit No. 99.

A. Exhibit 99 again shows routes of the Southern Pacific Company from points served in common with the S. P. and S. System to destinations in the same territory covered by Exhibit—

Q. (Interrupting) That is 98?

A. (Continuing) —Exhibit 98.

The stations served in common by the S.P. with the Oregon Electric and the S. P. and S. are shown on Pages 2 and 3 of the exhibit. There are four routes to explain, namely, 27L, 27M, 27N, and 27P.

These routes are not shown opposite the station, Portland, because the Southern Pacific could not receive a haul on traffic moving eastward over the Union Pacific or S. P. and S.

Exam. Dishman: You are discussing Exhibit 99, are you?

The Witness: Yes, sir.

Exam. Dishman: 99?

The Witness: Yes, sir.
Exam. Dishman: All right.

A. Route 27L is shown on Page 5. It applies Southern Pacific, Portland, thence the Great Northern to Seattle in connection with the Milwaukee Road.

27M applies Southern Pacific, Portland, in connection [fol. 3458] with the Northern Pacific to Tacoma, Washington, and the Milwaukee Road.

27N applies via the Union Pacific to Marengo, Washington, in connection with the Milwaukee Road.

27P applies Portland in connection with the S. P. and S. via Spokane, thence the Milwaukee Road.

These routes were also prescribed by the Commission in 51 I.C.C. 250.

By Mr. Rockwood:

Q. Does that complete your discussion of Exhibit 99?

A. That is all the explanation of Exhibit 99.

Q. All right, turn to Exhibit 100.

A. Exhibit 100 covers Union Pacific routes from stations served in common with the S. P. and S. on eastbound lumber to the same destination territory as that included in Exhibit No. 98.

The stations served in common with the Union Pacific are shown on Pages 2 and 3 of this exhibit.

Route 22E is shown opposite the stations listed thereon. The explanation of Route 22E is shown on Page No. 4. This route applies Union Pacific, Marengo, Washington, thence the Milwaukee Road.

Q. Is that subject to the same limitations with respect to across lake routes? Excuse me—

A. (Interrupting) These apply to Tariff 28.

Q. That is territory west of official territory?

[fol. 3459] A. There is another route to explain in connection with this exhibit, and that is Route 23K. It applies Union Pacific, Butte or Silver Bow, Montana, thence the Milwaukee Road. The explanation is on Page 6.

Q. Now, your next series of exhibits includes 101, 102, 103. Describe the pattern of these exhibits again, will you, please?

A. These exhibits again follow the same pattern to show routes on eastbound lumber from S. P. and S. stations, covered by Exhibit 101, from Southern Pacific stations served in common with the S. P. and S. System, covered by Exhibit 102, and Union Pacific stations served in common with the S. P. and S. System, covered by Exhibit 103, to all territory east of that covered by my previous series of exhibits, 98, 99, and 100. More specifically, to destinations shown in Transcontinental Freight Bureau Tariff 17-S. Agent Prueter, I.C.C. 1511.

Q. All right, will you please comment more specifically on Exhibit 101?

A. The East Portland routes, similar to those which I have discussed in connection with other exhibits, include Route 30A, 30C, 30E, and 30J. All of the other routes shown in Exhibit 101 are standard routes, as I have defined in that term.

Q. Will you comment further on Exhibit 102?

Mr. Maguire: I wonder if I may interrupt with a question for clarification here on Exhibit No. 101?

Mr. Rockwood: Go ahead.

[fol. 3460] Mr. Maguire: It is understood, isn't it, Mr. Ehlen, that since this covers everything east of the territory covered by Tariff 28 series, that that covers the entire eastern and southeastern part of the United States, does it, as to destination territory?

The Witness: Yes, it does.

Mr. Maguire: And you do not show the routes east of those covered by the Western Trunk line connections of the various carriers, do you?

The Witness: No.

Mr. Maguire: Thank you.

By Mr. Rockwood:

Q. We are talking about Exhibit 102.

A. The only route shown in Exhibit 102 on which I should comment is 27X shown on Page 9. This is the route Southern Pacific, Portland, Union Pacific, Marengo, Washington, Milwaukee, beyond to official territory. It applies beyond only via the so-called across lake routes through

Manistique, Mackinaw City, Menominee, Michigan, Kewaunee, Milwaukee, or Manitowoc, Wisconsin, in connection with car ferry service across Lake Michigan.

Q. All right, turn to Exhibit 103. Is there any comment that you want to make with respect to this exhibit?

A. In connection with this exhibit I comment only on Route 22E—

Mr. Cockrum: E?

The Witness: E.

A. (Continuing) —which is Union Pacific via Marengo, [fol. 3461] Washington, and the Milwaukee, but again applied only via the across lake routes which I have described in connection with the previous exhibit. I call attention to the fact that this Route 22E does not apply from Vancouver, Washington, over the Union Pacific. This exception with respect to Vancouver is the same which the Union Pacific makes, as explained by me in connection with class and commodity rates covered by my previous exhibit.

Q. Exhibit 91?

A. 91.

Q. All right, now take up your final series of exhibits, Nos. 104, 105, and 106. What does this series show?

A. These exhibits again relate to eastbound rates on lumber and other forest products to given destinations, as defined in Transcontinental Freight Bureau Tariff 16-L, Prueter's I.C.C. 4541. This destination territory is in Eastern Canada.

In the Exhibit 104 the first of the series which relates to routes from S. P. and S. System stations, the East Portland routes of the nature which I have already described, are 30G, 30H, 30J, and 30K. All of the other routes in this exhibit are what I have characterized as standard routes.

Q. Now, will you proceed, please, with Exhibit No. 105?

A. Exhibit No. 105 again relates to routes to the same destination territory from the Southern Pacific stations served in common with the S. P. and S.

Q. Can you tell us the extent to which the Milwaukee [fol. 3462] participates on the routes in this tariff?

A. The routes in this tariff apply via the long haul route of the Southern Pacific via Ogden or from Portland in con-

nection with the Union Pacific via Omaha and Council Bluffs, thence Milwaukee and other roads.

Q. The Milwaukee participates also in Route No. 27?

A. The Milwaukee does participate in Route 27, shown on Page 3. The route applies Southern Pacific, Portland, Great Northern, Chehalis, C-h-e-h-a-l-i-s, Washington, Milwaukee Road via Mobridge, South Dakota, and is restricted to shipments that are recorded transit privileges on the Milwaukee at points in Washington, namely, Aberdeen, Cosmopolis, Hoquiam, Montesano, or Raymond, Washington.

Q. What branch line of the Milwaukee are those located on?

A. That is known, I believe, as the Grays Harbor Branch.

Mr. Maguire: Pardon the interruption for clarification. Is Raymond on Grays Harbor?

The Witness: Well, I am not sure about that.

Mr. Maguire: Would you accept my exception? Is Willapah right?

The Witness: Yes.

Mr. Maguire: Not that it makes any difference.

The Witness: No, it won't make a bit of difference, Mr. Maguire.

By Mr. Rockwood:

Q. Now take up your Exhibit No. 106, if you will, Mr. [fol. 3463] Ehlen.

A. In Exhibit 106 the Milwaukee can participate only in Route 32B, which is shown opposite all of the stations on Pages 2 and 3 of my exhibit, except Vancouver, Washington. The explanation of Route 32B is shown on Page 4 as applying Union Pacific, Marengo, Washington, Milwaukee via Mobridge, South Dakota. And it is also restricted to the so-called across lake routes.

Q. Did you prepare an exhibit, Mr. Ehlen, showing stations on the Milwaukee served by other railroads?

A. I did, sir.

Mr. Rockwood: I ask there be marked for identification—

Exam. Dishman: Exhibit 107.

(Defendant's Exhibit No. 107, Witness Ehlen, was marked for identification.)

Mr. Rockwood (continuing): —a compilation with caption on the first page substantially as suggested in my last question.

By Mr. Rockwood:

Q. Is this Exhibit No. 107 the exhibit of the character which I referred to in my question and which was prepared by you?

A. It is.

Q. Tell us what you have shown in this Exhibit No. 107.

A. Exhibit 107 shows a list of the Milwaukee Road stations throughout the territory west of Spokane—

Q. (Interrupting) West of Spokane?

A. Or east of Spokane, pardon me, to the eastern ter- [fol. 3464] minus of the Milwaukee Road. It is all the points served by the Milwaukee in common with other railroads.

Q. And in the middle column on each page you show the roads which also serve those stations in common with the Milwaukee?

A. I do.

Q. And on the final column you show the railroads with which the Milwaukee interchanges at those points?

A. Yes.

Q. Have you any other comments you wish to make on this exhibit?

A. Yes. There are 398 stations located on the Milwaukee in the states shown, of which 233 of them, or at which 233 of them there are interchange tracks between the connecting lines, as shown in Column 3 of the exhibit.

Q. Now, have you prepared a further exhibit, list of stations on the S. P. and S. System, where there are facilities for handling carload or less than carload together with the names of other carriers serving those stations?

A. I have.

Exam. Dishman: That will be identified as Exhibit No. 108.

(Defendant's Exhibit No. 108, Witness Ehlen, was marked for identification.)

By Mr. Rockwood:

Q. Was this Exhibit No. 108 prepared by you, Mr. Ehlen?

A. It was prepared at my direction.

Q. Will you tell us about this exhibit?

[fol. 3465] A. This exhibit shows a complete list of the stations served by the S. P. and S. System and points that are served in common with other railroads.

Q. Are there any further comments that you wish to make with respect to this exhibit?

A. I believe the exhibit speaks for itself.

Q. I have a few additional short subjects that I want to talk with you about. Have you checked the lumber tariffs to determine what the diversion privileges are on carload shipments of lumber, the number of diversions permitted, and the conditions under which diversions can be made?

A. The diversion privileges are fairly uniform throughout the United States. The diversion and reconsigning of freight through regulations in connection therewith are published in S. P. and S. Tariff 845-O, I.C.C. 740. Rule No. 5 will only permit one change in destination after leaving initial point, billing point. Cars which have had a change in destination may be stopped at a point intermediate to the new destination and be completely unloaded at that point.

Q. Can be completely unloaded at a point short of the diverted destination, is that it? I don't quite understand. Can be stopped?

A. In other words, a shipment that reaches its destination cannot be diverted if it is set at an industry track, nor can it be diverted if it is placed on a team track and partially unloaded.

[fol. 3466] Q. I didn't understand the previous answer. Suppose this, suppose the car is billed to Minnesota Transfer and before it reaches the Minnesota Transfer it is diverted, we will say, to Chicago via the Milwaukee. Could it be stopped for partial unloading on the route between Minnesota Transfer and Chicago?

A. No. It would have to move through to its diverted destination.

Q. And after that one diversion could it be further diverted to another destination?

A. It could be diverted to another destination only on the combination of the rates, of local rates.

Q. And what constitutes delivery which destroys the right to divert?

A. Delivery at an industry, on an industry track, or partial unloading on a team track.

Q. During the testimony of one of the witness who testified last week—I think it was Mr. Ulyatt. I may be mistaken. But there was some suggestion made that the S. P. and S. has no great need or use for refrigerator cars, and some comments were made as to the amount of fresh fruits and vegetables shown in Mr. Lear's or Mr. Webb's exhibit. Can you give us a general picture of the extent of the use by the S. P. and S. refrigerator cars and commodities in general that require that type of equipment?

A. Our demand for refrigerator cars will vary from year to year according to the extent produce is raised in our [fol. 3467] territory, that is, fruits and vegetables, other commodities that are packed require refrigerator cars. It will be a rough estimate. I will say that our requirements would run from thirty-five hundred to forty-five hundred cars per annum.

Q. What commodities are the principal ones that you can handle in such equipment?

A. The principal commodity that requires the largest amount of refrigerator cars are potatoes, and potatoes are loaded in refrigerator cars regardless of the time of the year. During the period of October 15 to April 15 is the so-called heater period, and the balance of the year they usually move under ventilation.

The next commodity in line would be canned foods from the fruit and vegetable canneries in the Willamette Valley and at Vancouver and Astoria, Oregon. At the latter point is a canned fish shipping point. Frozen fresh fruits and vegetables require a large number of refrigerators. There are other miscellaneous commodities such as frozen poultry, some butter, cheese—

Q. (Interrupting) Eggs?

A. No, we don't move any eggs from the coast any more. We used to move about 300 cars a year, but that tonnage his disappeared.

I think I have named the principal ones that require refrigerator cars.

Q. Now, there was some suggestion made during the cross-examination of one of the witnesses last week that on unrouted traffic the S. P. and S. tended to favor the Burling-[fol. 3468] ton for movement beyond Minnesota Transfer. Is there any material volume of unrouted traffic received by the S. P. and S.?

A. Yes, we have a volume that varies, I would say from possibly three to five hundred cars a year. Some of our lumber and plywood producers do not want to assume the responsibility for routing beyond our lines, and they leave the routing to the origin carrier, especially that routing beyond the transfer and to the territory east of Chicago and the southeast. We divided that unrouted traffic between the various carriers on a reciprocal basis. In other words, for illustration, the Chicago North Western or the M. & St. L. or the Rock Island purchase lumber in our territory, and for every carload of lumber they route via the S. P. and S. System we make an attempt to offset it, each car, by directing an unrouted car to those carriers.

Q. Well, does the Burlington get all of it, by any means?

A. Certainly not.

Q. Were you present at the first day of the hearing of this session during my cross-examination of Mr. Bowman, traffic manager of J. I. Case & Company?

A. I was.

Q. I directed to him some questions relating to the right under the tariffs to store agricultural implements in transit after it had received some transit service west of certain points on the Northern Transcontinental, including the Milwaukee and Union Pacific. Have you checked to determine [fol. 3469] whether there is such a right for storage in transit after the carload has received transit privileges on certain points along the Transcontinental routes I referred to?

A. No, the tariff restricts a storage in transit privilege after a shipment has once stopped for partial unloading in transit. The transit privileges are published in North Pacific Coast Freight Bureau Local Freight Tariff 117-A,

I.C.C. No. 866, Item 1,000 on Page 18 of this tariff, in Note A.

Note A reads as follows: "Storage or assembling will not be permitted on shipments which have been accorded previous transit privilege at points west of Mobridge, South Dakota, on the Milwaukee, Snowden, Montana, on the Great Northern, Mandan, North Dakota, on the Northern Pacific, and Cheyenne, Wyoming, on the Union Pacific, except storage in transit of tractors at Portland, Oregon, will be permitted on shipments which have been accorded a previous transit privilege at Yakima, Washington."

OFFERS IN EVIDENCE

Mr. Rockwood: Mr. Examiner, I offer in evidence the exhibits discussed by Mr. Ehlen, being Exhibits 76 to 108, inclusive.

Mr. Maguire: I would like to have ruling reserved. In the first place, let me say that I have no objection to Exhibits 89 to 108.

Exam. Dishman: 89 to 108?

Mr. Maguire: Inclusive. But as to the others, I should like to have ruling reserved on them. I think there are some of them to which I have no objection, but I don't want [fol. 3470] to take the time of the Examiner in picking them out at this time.

Exam. Dishman: Exhibits 89 to 108 are now received in evidence, and ruling will now be reserved on Exhibits 76 to 88, inclusive.

(Defendant's Exhibits Nos. 89 to 108, inclusive, Witness Ehlen, received in evidence.)

Exam. Dishman: We will take a short recess.

(Short recess.)

Exam. Dishman: The hearing will come to order, gentlemen.

Mr. Rockwood: I probably should say in tendering Mr. Ehlen for cross-examination, I meant to say, that he is subject to cross-examination on the subjects that he has covered at this session and likewise on the subjects that he

covered at the Portland hearing, particularly Exhibit No. 28 and the related subjects.

Cross examination.

By Mr. Maguire:

Q. Let's take your set of exhibits and kind of work backwards, Mr. Ehlen, No. 89 to 108, inclusive. And I think that we can probably, without going laboriously over each one of these exhibits, which neither of us wants to do, we can get the general pattern of the different classes of exhibits you have.

Exhibit No. 89, which is commodities in general other than the particular ones you mentioned. In that, as other exhibits, your routing to the east and to the southwest, in [fol. 3471] particular, through Laurel, thence the Burlington, is a regular feature of each of these routing exhibits, isn't it?

A. Yes, that is what we call one of our standard routes.

Q. Yes, one of your standard routes is the Laurel route?

A. Yes, sir.

Q. And of course it stands to reason that to the extent that the Laurel route is utilized the defendants who connect with the Great Northern and Northern Pacific at Minnesota Transfer are deprived of the haul, a large portion, if not all of their haul, where the Laurel Gateway is used, that is, they don't get a chance at that business at all, do they?

A. Not while they are a Minnesota Transfer or Twin Cities Gateway haul, but the Laurel route—are you speaking about Exhibit 89 only or all of the exhibits?

Q. Let's take all of the exhibits, and if you want to make any exceptions to any of them, you can.

A. On the class of commodities the rates apply via Laurel to eastern destinations to the southeast and the southwest, but there is certain traffic covered by this route to destinations in territory which could not move via the Twin Cities Gateway because of the higher-rated territory the traffic would have to move.

Q. That is in the nature of a, you might almost call it a, while it isn't actually a backhaul, but you do angle backward

or angle westward from the transfer and run through [fol. 3472] higher-rated territory to get to territory which is lower rated via Laurel?

A. That is right. I'd like to explain further—

Q. Yes.

A. (Continuing) —that on lumber the rates are restricted via the Laurel Gateway, that is, they do not apply beyond certain points in Iowa to the official classification territory.

Q. Yes, in those cases the long haul to the transfer is preserved to the Great Northern and Northern Pacific, isn't it?

A. It is.

Q. Now, so far as your Southern Pacific and Union Pacific routing is concerned, that is, in connection with the Milwaukee Road, the general pattern is, so far as your Milwaukee routing through Marengo is concerned, the destination territory is limited to north of the Omaha line of the Milwaukee with no destinations in the southeast, and so far as official territory is concerned, the only territory which can be reached is Groups A, B, and C, and that only through the across-lake route, isn't that the general pattern of those rates?

A. That is the general pattern of the eastbound lumber rates to the official classification territory. However, through the Western Trunk Line territory the rates applying from the Southern Pacific and the Union Pacific apply to all of the Milwaukee territory north of the Indiana-Illinois line. The last station on the Terre Haute Branch to which the rates apply is Quaker, Illinois. Now, you have an application of rates from all Southern Pacific points to [fol. 3473] the California border and the Union Pacific territory west of Pendleton to the Western Trunk Line territory served by the Milwaukee.

Q. North of the Omaha line?

A. No, sir, not on lumber, Mr. Maguire.

Q. I think I did misstate it partly.

A. The classes and commodities are restricted to the Omaha-Chicago line.

Q. And on lumber shipments can be routed to all of Western Trunk Line territory on and north of our Omaha line and to points on the Milwaukee-Kansas City line only?

A. It would be the entire Milwaukee territory, as I explained before, north and west of Quaker, Illinois. That is the dividing line. That is the Illinois-Indiana line.

Q. Those are points on the Illinois-Indiana line?

A. Yes.

Q. And then the rest of my description is correct, is it not, so far as Western Trunk Line territory is concerned, it must be to points on or north of the Omaha line and on the Kansas City line?

A. It would be every point served by the Milwaukee in Western Trunk Line territory north of Quaker, and that takes in all of your territory, Mr. Maguire. If you had a map, I could point it out to you.

Q. Aren't you and I saying just about the same thing?

A. Well, maybe we are.

[fol. 3474] Q. You also agree with me, do you not, upon my description of the routes or the manner of reaching Routes A, B, and C, and the fact that they are limited, the lumber rates are limited, to Groups A, B, and C?

A. Yes, I agree with that.

Q. I think you and I are saying the same thing in different ways, aren't we?

A. (No response.)

Q. With regard to your rates through the Bieber Gateway—the lumber moving over the Bieber Gateway has open routing to the entire east and southeast, does it not?

A. It has; but it is confined to origin points on the Oregon Electric.

Q. Can a shipment—I assume, then, a shipment originating on the Oregon Electric may go through Bieber and the Bieber Gateway and end up in the Chicago territory, can it not?

A. It can.

Q. Have you any information as to the mileage, relative mileage, to Chicago via the Bieber Gateway and via the Twin Cities?

A. I have not checked that, but the mileage—

Q. (Interrupting) If you haven't checked it, let's not speculate about it.

And, of course, anything going through the Bieber Gateway to eastern destinations cannot be participated in by the

lines through Minnesota Transfer, except insofar as those [fol. 3475] railroad lines may extend into, let us say, the southwest?

A. No.

Q. When you stated that the unrouted traffic amounted to 300 to 500 cars per year, is that all lumber?

A. No, we have other commodities that are unrouted.

Q. How much of it would be lumber?

A. Oh, it would be a rough guess on my part. I haven't looked at the reciprocal account for some time. A rough guess would be 80 per cent.

Q. So somewhere between 240—I am just using arithmetic here—and 400 cars of lumber would be unrouted by, as you explained, shippers who do not want to take the responsibility of routing their own shipments, and those are available for delivery on a reciprocal basis to certain Western Trunk line carriers who purchase their lumber for their own use on the S. P. and S. System and give the S. P. and S. a haul?

A. That is right.

Q. I presume that the Burlington buys some of their lumber on the S. P. and S., does it not?

A. It does.

Q. Are they, in distributing unrouted lumber traffic, held to the same reciprocal accountability as other Western Trunk line carriers?

A. They are treated the same as the other ones.

Q. I don't know, I don't wish to take the time to look [fol. 3476] through these exhibits, but can you give me a general estimate of about how many carloads of lumber and forest products per year you ship which is routed through the Minnesota Transfer Gateway or some other gateway in the Middlewest which can be divided—I mean, which travels over the same routes as these 240 to 400 cars which are divided on a reciprocal basis? That is 240 to 400 cars out of how many?

A. Well, it would be a good many thousand cars involved. I will say that 37.7 per cent of our revenue was derived from forest products in 1953, and as to the number of cars that actually moved through the Minnesota Transfer Gateway, I have no way of estimating it.

Q. I think we could agree on saying that the amount that is divided on the reciprocal basis, which you have described, is a very insignificant portion of your—

A. (Interrupting) Oh, yes, it is very insignificant.

Q. Going back again to your Exhibits 89 to 106, inclusive, you have not taken into consideration in those exhibits, and those exhibits do not attempt to show, what relative transit privileges are available over those routes, except insofar as the transit privileges determine the application of rates over those routes?

A. No.

Q. You do know, as a matter of fact, do you not, on lumber shipments in particular which move via S.P.-U.P. or U.P. alone to Marengo, thence Milwaukee, that shipments moving [fol. 3477] over that route may not receive any transit privileges of any sort on the Union Pacific or Southern Pacific?

A. No, the rates are restricted to transit privileges via the Marengo Gateway. In other words, every Transcontinental line restricts its rates to its long haul when transit privileges are accorded.

Q. Then your answer is that those rates are restricted? That is what I asked you.

A. When transit privileges are accorded the traffic west of Marengo. However, transit privileges are available when the traffic is delivered to you. You may accord the transit privileges, accord transit privileges to that traffic, provided that traffic has not been accorded a transit privilege west of Marengo.

Q. As a matter of fact, if the transit privilege has been accorded west of Marengo, the rates do not apply, do they?

A. No, they don't.

Q. And so what you are saying is something which is not responsive to my question, but I will leave it stand, let it stand. You are saying that the Milwaukee may apply transit after it once gets the car?

A. It can, provided the transit privilege has not been accorded west of Marengo.

Q. Well, now, we are getting around in a circle. As a matter of fact, transit privileges may not be applied west [fol. 3478] of Marengo on those routes?

A. No, it may not be applied west of Marengo.

Q. I think we have pursued that far enough.

Now, with regard to the testimony covering the geographical distribution of fruits and vegetables, et cetera, you furnished figures for one year, as I recall, did you not?

A. Yes, sir.

Q. And you know, as a matter of fact, that the pattern of movement of fruit and vegetables, and particularly fruits, changes from year to year, depending upon the successful production in different producing areas of the country? That is true, isn't it?

A. That is not true to our territory, Mr. Maguire. The fruit produced in the S. P. and S. territory is insignificant.

Q. Now, I am not asking you that at all, Mr. Ehlen.

A. And the pattern does not change—you asked me about the pattern. The pattern does not change.

Q. I am asking you about the pattern generally. I am not asking you about the S. P. and S. at all. You have injected that of your own accord.

Mr. Rockwood: If the question is not directed to the S. P. and S. territory as an origin point of fruits and vegetables, the cross-examination is on a subject which is irrelevant and is improper cross-examination because it is a subject not covered by direct.

[fol. 3479] Exam. Dishman: Do you restrict that to S. P. and S.?

Mr. Maguire: I do not restrict it, Mr. Examiner.

Exam. Dishman: Well, does the witness know?

Mr. Maguire: This testimony on production covered wide areas in the entire States of Washington and Oregon. If it is irrelevant, then counsel should move to strike his own exhibits.

A. Definitely I do not know. Of course climatic conditions and crop failures will have a bearing on the production of fruit and vegetables in any area of the United States, but, as a general rule, there is very seldom a failure of the production of apples and pears in the areas in the Pacific Northwest.

By Mr. Maguire:

Q. That is true insofar as the Pacific Northwest is concerned. But the distribution of Pacific Northwest produce varies in accordance with crop failures in other parts of the country which normally supply other markets, isn't that true?

Mr. Rockwood: Just a moment. Produce, did he not talk about all produce?

Mr. Maguire: The fruits and vegetables which you have mentioned.

Mr. Rockwood: It is limited, then, to apples, pears, cherries, potatoes, onions, and berries.

Mr. Maguire: I think onions and potatoes.

Mr. Rockwood: They are not a fruit.

Mr. Maguire: They are a vegetable.

[fol. 3480] Mr. Rockwood: Oh, you are talking about vegetables. I will let you bring in potatoes.

Mr. Maguire: Would you like to have the question read back?

The Witness: I certainly would, sir.

(Question read.)

By Mr. Maguire:

Q. I am extending that question to fruits and vegetables, and if you wish to restrict it to onions and potatoes, you may do so in your answer.

Mr. Rockwood: I don't understand the question. You mean the production of apples in Washington depends upon the crop failure of apples in New York?

Mr. Maguire: No, I didn't say anything of the kind.

By Mr. Maguire:

Q. You know what I am talking about, don't you?

Mr. Rockwood: No, I don't, Mr. Maguire.

Mr. Maguire: Let's see if the witness knows what I am talking about.

A. Naturally production has a bearing on distribution, but with our insignificant amount of apples and pears, it would not have a bearing.

Mr. Maguire: I move that that be stricken as not responsive to the question.

Exam. Dishman: He said it would have a bearing so that much is responsive.

Mr. Maguire: That much is responsive, and the rest is [fol. 3481] not, and I move that it be stricken.

Exam. Dishman: All right.

By Mr. Maguire:

Q. As I recall, Mr. Ehlen, yesterday afternoon you testified that the Holden Lumber Company at Prescott, Oregon, represented at the June 1954 hearing by Mr. Fred Holden, was out of business?

A. From the standpoint of shipping lumber via rail from Prescott, Oregon. He has an operation at—if you understood that I said that he was out of business. What I think I did testify to that his mill at Prescott was not running, not in operation. However, he has an operation at Longview, Washington, which I do not know anything about, whether it is operating or not.

Q. And, as a matter of fact, his mill is at Prescott, not at Longview, isn't it?

A. I don't know. He has a mill at Prescott. It was the old Clark Wilson Lumber site that was taken over by Mr. Holden.

Q. And, as a matter of fact, within the past three or four weeks he has been shipping over the S. P. and S. eight or nine carloads a day, hasn't he?

A. It is possible because I checked before I left, and that is over two weeks ago, and our traveling man informed me that he had not resumed shipping. I made a point to check that feature.

Q. This was what somebody else told you about it?

A. Yes; well, we have—yes, that is true.

Q. So you really don't know whether his mill is closed [fol. 3482] down or not, do you, except that your traveling man says that he hasn't been shipping?

A. Well, I know that his mill was closed down a few months ago, that is, just before the Portland hearing, because I was in that territory at that time and his mill was not operating, and that would be in February or the latter part of January.

Q. How many days did you look at it?

A. Well, I just went in there the one day.

Q. And it was not operating on that day that you were in there?

A. It was not operating, and had not operated before that time. And this is hearsay, too, that we—

Q. (Interrupting) Well, if it is hearsay, we don't care to have it.

A. All right, sir.

Mr. Rockwood: I take it that Mr. Maguire's question about eight or nine cars a day is not evidence.

Mr. Maguire: Oh, no, I don't claim that it is evidence. I just wanted to see what the witness knew about it. I admit that the question is somewhat reminiscent of your own cross-examination of my witnesses.

By Mr. Maguire:

Q. Now, with regard to your general practices with respect to the negotiation of rates in which the S. P. and S. participates, and in using the word negotiation I would also include the establishment of rates, your relationship with the traffic executives of the Great Northern and Northern [fol. 3483] Pacific has continued over such a period of time that the general principles under which the S. P. and S. participates or refuses to participate are pretty well established by now, are they not?

A. Oh, I imagine they were established from the beginning of the railroad. My personal knowledge of the—

Q. (Interrupting) Have you answered my question? I asked if that had become pretty well established.

A. Oh, they have been established.

Q. And so it is not necessary so long as you act within the general policies which have been laid out by the management of your company and the executive committee and the officers, the general officers of your company, that so

long as you keep within the framework of those general policies you go your own way, don't you?

A. Yes, we do.

Q. In your relationship with the Great Northern and the Northern Pacific, of course, you have joint rates with one or both of them at different points and off division routes, don't you?

A. We do.

Q. And how are the divisions which the S. P. and S. System receives determined?

A. Well, the divisions were agreed upon years ago. They are standard divisions, except for some adjustments that have been made to transpose stated divisions into percentage divisions, like on the Oregon Electric a few years ago, and we still have some—

[fol. 3484] Q. Let us take a shipment. Let's use an example. Let's take a shipment of lumber off the Oregon Electric, which is routed Oregon Electric, S. P. and S. to Spokane, thence, we will pick either one of the two St. Paul companies, the Northern Pacific, to Minnesota Transfer. Now, on the revenue west of the transfer how is that divided?

Mr. Rockwood: Just a minute. The shipment stopped at Minnesota Transfer, did it, and was there delivered?

By Mr. Maguire:

Q. As a matter of fact, where it is a shipment to eastern territory—let's take that revenue first—you split your revenue so that it is assigned at Minnesota Transfer and west, don't you?

A. Yes.

Q. How is that divided between the Northern Pacific, the S. P. and S., and the Oregon Electric?

A. We first deduct the Oregon Electric division.

Q. Which is what?

A. On the Twin Cities on lumber it is either—I believe it is 18 per cent of the west of the Twin Cities revenue. Then the S. P. and S. of that balance receives a terminal arbitrary at Portland. After that terminal arbitrary is deducted the balance of the revenue is divided 25 per cent

to the S. P. and S. and 75 per cent to the parent lines via Spokane.

Q. Would that same rate or division apply to a shipment which terminated on the Northern Pacific west of Minnesota Transfer?

[fol. 3485] A. That same division would apply, except, say in the Montana territory we have—I think I can give you that exact because of the instructions. We wrote Mr. Engel a letter on April 5 outlining the division to the Montana territory, if that is what you are speaking of.

Q. You wrote him about your divisions with the Northern Pacific?

A. No. That we offered the Milwaukee the very same divisions that we have in connection with our parent lines.

Q. Yes. In other words—

Mr. Rockwood: May I get that clear?

What traffic with the Milwaukee?

The Witness: On the lumber traffic to the points west of Mobridge.

Mr. Rockwood: Under an existing rate or under a proposed rate?

The Witness: Under a proposed rate.

By Mr. Maguire:

Q. In other words, the rates of division that the S. P. and S. maintains with the Great Northern and Northern Pacific give the S. P. and S. no lower rate of division than would apply between the S. P. and S. System and any other railroad, isn't that true?

A. Well, on transcontinental traffic we only have the rates in connection with our parent lines, except on lumber with the Milwaukee, and I believe that those arbitraries that applied prior to converting the division to a percentage still applies in connection with our parent lines except on lumber with the Milwaukee, and I believe that those arbitraries that [fol. 3486] applied prior to converting the division to a percentage still applies in connection with the Milwaukee. Now, I am not sure about that. It would have to be checked.

Q. All right, let's put it this way, Mr. Ehlen, that on traffic into territory or from territory over routes to which

the S. P. and S. admits other lines than the Great Northern or the Northern Pacific, that the divisions given the Great Northern and the Northern Pacific on similar traffic is no more favorable to those two lines than the divisions which the S. P. and S. agrees to with outsiders, so to speak?

Mr. Rockwood: Just a minute. Your outsiders is plural. I think the witness's suggestion was that there was very little of that.

Mr. Maguire: I know it, and that is what I am asking him about as to where those situations do exist.

Mr. Rockwood: Well, that wasn't your question.

Mr. Maguire: That was my question, and he understands it.

Mr. Rockwood: No, you asked about measure of division.

Mr. Maguire: Mr. Examiner, we are going through the same old thing, whenever I get a witness to a point that counsel gets a little afraid of, they interrupt them with a wide-eyed innocence about it themselves. I think they should be cautioned against these needless interruptions.

Exam. Dishman: Do you understand the question?

The Witness: No, I don't. Mr. Maguire will have to give me a specific example before I can—

[fol. 3487] By Mr. Maguire:

Q. All right, I will give you a specific example, the one you just mentioned.

Mr. Torinus: Mr. Examiner, before Mr. Maguire proceeds, I would like to have him state the pertinency of this line of questioning.

Mr. Maguire: If you have any objections, you may state an objection to it. I don't have to defend a question where there is no objection.

Mr. Torinus: I object to further questions along this line as irrelevant to any issue in this proceeding. We are not trying a division case.

Mr. Maguire: We are trying a case of common operation or control and of where the record has been filled with reference to "parent companies" and effort has been made to show the complete identity of the S. P. and S. as a part

of the system of the Great Northern and Northern Pacific, I am entitled to go into all phases dealing with that.

Exam. Dishman: I rule that this line of questioning is proper as to what has been introduced as direct evidence.

By Mr. Maguire:

Q. In the instance that you just mentioned, the letter that you wrote to Mr. Engel, you stated that you would give the Milwaukee Railroad the same basis of divisions on lumber traffic to territory west of Mobridge that you would to the so-called parent companies on corresponding distances on their lines, isn't that true?

[fol. 3488] A. We have offered the Milwaukee the same divisions that we have with our parent lines on this particular traffic that I am talking about, and that is lumber to the Milwaukee territory west of Mobridge.

Q. All right. Now let's take a shipment of lumber to Minneapolis via the Milwaukee in which, by reason of intermediate application, though Minneapolis is not named, to which point rates do apply via the Milwaukee, over the Milwaukee via Spokane, do they not?

A. They do.

Q. All right, there you have exactly the same destination point as you would on shipments over either the Great Northern or Northern Pacific. Now, what is the difference, if any, between the divisions accorded the Great Northern or Northern Pacific out of that haul and the divisions accorded the Milwaukee?

A. Well, as I tried to state before, the Milwaukee, the Oregon Electric division on that Milwaukee traffic, is an arbitrary, and I don't believe the arbitrary has been converted to a percentage. And before we converted the arbitraries to percentage, the division was the same to the Oregon Electric on traffic routed via Spokane, Milwaukee, as on traffic handled in connection with the Great Northern and Northern Pacific.

Q. Then can you say that if there is any difference in the level of what the Great Northern and the Northern Pacific get out of a haul of that sort and what the Milwaukee gets [fol. 3489] out of it, will you please tell me what it is?

A. I can't tell you what it is without having a division, sir.

Q. Is there any difference?

A. There may and may not be a difference.

Q. You told Mr. Engel the other day that this diversion to percentages, so far as the Oregon Electric arbitrary was concerned, was just a matter of convenience only, didn't you?

A. Oh, it is a matter of convenience, yes. In other words, the arbitraries were subjected to the Ex Parte 162, 166, and Ex Parte 168 increases. The accounting departments wanted to eliminate the difficulty or the extra work of applying the ex parte increases to the arbitraries, and we were asked to make a study to convert the arbitraries to a percentage basis that would give the Oregon Electric the same amount of revenue in divisions.

Q. And so that's what was done, and so your percentage is used, but that gives the Oregon Electric the same amount of money, doesn't it?

A. That is right.

Q. So regardless of whether you call it an arbitrary in dealing with the Milwaukee or percentage in dealing with the Great Northern and Northern Pacific, the same amount of money goes to the Oregon Electric, doesn't it?

A. It should.

Q. Yes.

[fol. 3490] A. If the arbitraries are still in effect in connection with the Milwaukee traffic converted to a percentage basis, the division would be the same.

Q. Then the S. P. and S. takes its 25 per cent of the remainder of the Twin Cities' revenue, does it not?

A. After deducting a terminal arbitrary at Portland.

Q. And that terminal arbitrary is deducted both for the Milwaukee and the G.N. and the Northern Pacific?

A. I believe it is.

Q. And then the same percentage is taken by the S. P. and S.—it is 25 per cent, isn't it?

A. It is so-called standard division.

Q. Yes, the standard division.

A. Mileage prorate minimum 25 per cent to the short line.

Q. Then having gone through that detail on that shipment of lumber, on three shipments of lumber, all of them destined to the Twin Cities or to Minneapolis from the same origin point on the Oregon Electric, one going Milwaukee, one going Great Northern, and one going Northern Pacific, the S. P. and S. would get the same number of dollars out of each one of those three shipments, would it not?

A. Yes, we should.

Q. I will digress for a moment, Mr. Ehlen. I believe you stated at the Portland hearing when we talked about the issuance of instructions to the Transcontinental Freight [fol. 3491] Bureau that the S. P. and S. has many times in the past issued instructions direct?

A. We have instructions—

Q. (Interrupting) Would you answer that, have you done it many times? Was that statement correct?

A. Over what period of time would you say?

Q. You were the one that made the statement. Do you still stand by that statement? I will read it to you, if you like.

A. Over a period of years, naturally, we have issued many instructions to the Transcontinental Freight Bureau. Even since the Portland hearing we issued instructions on the particular route that I pointed out in my routing exhibits.

Q. And I wish to say that I agree with you that the S. P. and S. may issue instructions, too. I was wrong about that in the Portland hearing.

A. I thought you were, but I wasn't sure about it myself.

Q. As a matter of fact, there was the specific proposal which you mentioned back in the 1920's for the establishment of rates, lumber rates, with the Milwaukee, I believe it was west of Mobridge, wasn't it?

A. No, those rates were east of Mobridge from the Santiam line.

Q. Oh, that is right. In that case the S. P. and S. either issued instructions or submitted that directly to the Transcontinental Freight Bureau, did it not?

A. We submitted the instructions direct, that is true.

[fol. 3492] Q. Mr. Ehlen, you read yesterday from a letter of July 2, 1943, addressed to Mr. J. C. Moore, who was then traffic manager of the S. P. and S., regarding industrial, handling of industrial traffic?

A. Yes, sir.

Q. May I look at that a moment, please?

A. Yes, sir.

Q. There is a—I don't care to go into it in detail, but there is nothing in those instructions which permits either the Great Northern or the Northern Pacific to impose its will upon the S. P. and S. with regard to industrial sites, industrial trackage, or other matters covered by that letter?

Mr. Rockwood: Just a minute. If we are going to have that and you are going to ask for a conclusion of the witness on the contents of that, I will ask that the memorandum be read into the record or reproduced as an exhibit because the memorandum, Mr. Maguire, I believe, will be considered the best evidence.

Mr. Maguire: This was characterized and summarized by the witness yesterday by counsel's own questions, and I am rather surprised that he should get so technical at this time about it.

Exam. Dishman: Are there any objections as to its receipt in evidence?

Mr. Maguire: I don't think it is necessary that it go in. There is just this one question I want to ask.

Mr. Rockwood: My objection stands. We are perfectly [fol. 3493] willing to put the memorandum in.

Exam. Dishman: The memorandum will be the best evidence.

Mr. Maguire: Very well, I will ask that the memorandum be copied into the record. I don't think we want to take the time to read it aloud. I want it to be copied in as though read.

Exam. Dishman: Is that agreeable?

Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

A. When a representative of either the Northern Pacific or Great Northern receives an inquiry for an industrial location, spur track, or other facility on the property of, or served by the S. P. and S., such inquiry will be referred to Mr. Moore who will secure the necessary application and take care of the preliminary details and then submit the proposition, together with a traffic estimate, to the representatives of the parent lines in the following manner:

One. Applications for indefinite term leases will be submitted to the Assistant General Freight Agent of the Great Northern and the Assistant General Freight and Passenger Agent of the Northern Pacific at Portland with copies of such letter to the Western Traffic Managers of the parent lines at Seattle. The Portland representatives of the parent lines will submit their recommendations to Mr. Moore direct and, if favorable, Mr. Moore will handle to a conclusion.

[fol. 3494] Two. Applications for definite term leases will be referred to the Western Traffic Managers at Seattle with copies to the Assistant General Freight Agent of the Great Northern and the Assistant General Freight and Passenger Agent of the Northern Pacific at Portland who will submit their recommendations to their respective Western Traffic Managers. If the recommendations of the Portland representatives are favorable and concurred in by the Western Traffic Managers, the latter will so advise Mr. Moore, sending copies of such advice to their respective St. Paul offices and Mr. Moore will handle to a conclusion with his superiors.

Three. Spur track agreements, industrial sites which require the purchase of property, or financing of buildings or other facilities: Mr. Moore will refer such matters direct to the Western Traffic Managers at Seattle with copies to the parent lines' representatives at Portland who will submit their recommendations to the Western Traffic Managers at Seattle. If the recommendations of the Portland representatives are favorable and concurred in by the Western Traffic Managers, the latter will so advise Mr. Moore with copies of such advice to their respective St. Paul offices and Mr. Moore will handle with his principals for executive approval by the parent lines.

By Mr. Maguire:

Q. Is there anything in these instructions which varies or is an exception to your general statement made on the witness stand that your directions were always by joint [fol. 3495] agreement of the Great Northern and Northern Pacific?

A. Well, at that time we could not negotiate a spur track—

Q. (Interrupting) Just a moment.

Would you read the question, please?

(Question read.)

By Mr. Maguire:

Q. Now, would you answer that question?

A. Well, our instructions come from the two parent lines.

Q. And this memorandum is no exception?

A. It was an exception at that time or it wouldn't have been issued, I don't believe, Mr. Maguire.

Q. Is there anything in there which gives either one of the companies the right to give you individual instructions without the other one concurring?

A. We receive joint instructions from both parent lines.

Q. Would you answer my question, is there anything in there which is an exception to that rule?

Mr. Rockwood: The material is going to be in the record. I object to this as trying to ask the witness for the interpretation of a written instrument on some technical ground that I can't think of.

Mr. Maguire: The witness has already, without objection by you, said there must have been some exception or they wouldn't have done it. Now I want to point out—

By Mr. Maguire:

Q. Will you take those instructions and point out in any respect where these instructions depart from the general [fol. 3496] rule that whatever you get in the matter of orders or instructions from the St. Paul companies is joint instructions?

A. Well, I think we have admitted that all through this hearing they are joint instructions.

Q. Then, if you will answer my question, there is nothing in there which is a departure from that rule, is there?

A. Not from issuing joint instructions.

Q. Yes.

Now, you have already testified about the procedure in the North Pacific Coast Freight Bureau, and it is my understanding that if there is a disagreement between the Northern Pacific representatives and the Great Northern representatives that in such case the S. P. and S. representative exercises his best judgment?

A. He does.

Q. In other words, he agrees with either one or the other of the two St. Paul lines' representatives as he sees fit in his own discretion?

A. If it is to our interest, yes.

Q. Yes. In other words, you consult the interests of the S. P. and S. in such cases?

A. Yes, and the interest of the parent line with whom the rate adjustment is negotiated.

Q. I am talking about the case where one of the parent lines, as you call them, votes one way and the other one [fol. 3497] votes the other way. There can be no agreement between them where there are conflicting votes, where one votes yes and one votes no? Where you have a yes vote by one of them and a no vote by the other one, then your representative, yourself or whoever is a representative of the traffic committee—and I think you personally are a representative on the traffic committee—

A. I am not on the traffic committee. I am on the executive committee.

Q. But your representative on the traffic committee in such case agrees with whichever one—he has to agree with one or the other, anyway, doesn't he, unless he abstains from voting?

A. That is what I was going to say. Sometimes they don't cast a vote at all.

Q. But when you do vote you vote to what your representative conceives to be to the best interest of the S. P. and S. Railroad, doesn't he?

A. And taking in consideration what is the best interest for the parent lines along with whom we are voting.

Q. Yes. In other words, you have to, in that case, repudiate one of the so-called parents and cleave to the other?

Mr. Rockwood: I object to your characterization, Mr. Maguire.

A. Well, naturally, we were going along with one or the other.

By Mr. Maguire:

Q. Yes. But where your two parent lines, as you call them, are at loggerheads, you then have the option of picking out which one you are going to side with, don't you?

[fol. 3498] Q. And while you do naturally have the very laudable desire to promote the interest of the one you are siding with, you are siding with that particular company because it promotes your own interests, aren't you?

A. I think the answer is yes.

Q. And in such cases of conflict between the Great Northern and the Northern Pacific each of those companies keeps hands off of you, so far as your vote is concerned, don't they?

A. Except we have never been directed by one or the other of the parent lines to not vote one way or the other, but we know our limitations when we—

Q. (Interrupting) Now, just a moment.

Mr. Rockwood: Now, this is perfectly pertinent.

Mr. Maguire: I don't think it is perfectly pertinent because this is argumentative.

Mr. Rockwood: Wait a minute.

Mr. Maguire: I asked for a factual question, and I don't care for an argument on it.

Mr. Rockwood: The witness is perfectly capable of explaining a practice which you opened wide up.

Exam. Dishman: You asked if any influence was brought to bear.

Mr. Maguire: Yes.

Exam. Dishman: You were explaining, were you not?

The Witness: Yes, it takes an explanation.

[fol. 3499] A. When a representative of the S. P. and S. attends a traffic committee at Seattle where possibly 100 to 150 subjects are discussed and disposed of in each month, when our representative attends that meeting he knows his limitations so far as the voting power of the S. P. and S. is concerned.

Exam. Dishman: What do you mean by limitations?

The Witness: What I mean by limitations, we cannot join other railroads in rates that would be detrimental to the Northern Pacific or Great Northern.

A. The general run of the subjects on the docket are voted upon and disposed of in an ordinary manner, but, if we have a subject or some other railroad has asked us to join in that particular rate, then we must consult both of the parent lines.

Exam. Dishman: That is not responsive. Mr. Witness, he was asking you about where one line voted one way and the other the other way and you have to join with one.

The Witness: I have already answered that, Mr. Examiner.

Mr. Maguire: Then this other, this other matter is entirely a volunteered statement and not responsive to the question, and I move that it all be stricken.

Exam. Dishman: It will be allowed to stand for what it might be worth, but I don't see that it is responsive. I don't see that it is answering the question.

Mr. Maguire: Might I suggest, Mr. Examiner, that the witness has just seized this opportunity to make an argu-

[fol. 3500] mentative statement—

Exam. Dishman: What does that have to do with whether or not one of the lines brings influence to bear on you?

Wasn't that the question?

Mr. Maguire: Yes, that was the question.

The Witness: I think I answered that question before.

Exam. Dishman: I didn't think your statement you just made was dealing with that. You were talking about your limitations.

Mr. Torinus: Mr. Examiner, I don't believe the question was asked about whether influence was brought to bear

one way or the other. The question Mr. Maguire asked was, he used the phrase hands off, as I recall it.

Exam. Dishman: That was sometime back.

Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

Mr. Rockwood: An objection has been made and a motion to strike and the Examiner has ruled that certain material should be stricken. I request that the material as the witness spoke it be allowed to remain in the record so that the Commission will ultimately be in a position to rule on whether the Examiner's ruling striking it is correct.

Exam. Dishman: My ruling is that it be not given consideration so we will let it go at that.

Mr. Maguire: There is a difference between not giving [fol. 3501] it any consideration and striking it. Of course it will remain bodily in the record, that is true. There will merely be the ruling whether it is stricken or not.

Exam. Dishman: You have a motion to strike so let's start anew. I think we have enough on that.

We will leave it in the record, and I have sustained a motion to strike, so let's start from there.

Mr. Maguire: We will just go on from there, Mr. Examiner, is that satisfactory?

Exam. Dishman: Yes.

By Mr. Maguire:

Q. Now, Mr. Ehlen, I have before me the manuscript from which you were reading yesterday. I wonder if you will turn down to Page 5. This is the section of your manuscript reading "Management and Control".

A. Page 5?

Q. The last answer at the bottom of the page as given by you says, "I cannot recall any instances where we have received conflicting instructions from the two parent lines. If in some cases"—this is as you testified—"the initial views of one of the parents differ from the initial views of the other in practice, they resolve their differences before issuing instructions to us so that instructions, as we

receive them, are approved by both." That was your language, wasn't it, yesterday?

A. That is true.

Q. Do you know anything about that of your own knowl- [fol. 3502] edge or was this a more or less of an assumption on your part?

A. No assumption whatever because we pass proposals back to the parent lines in St. Paul, and if one doesn't agree, then we simply wait until they do resolve their differences and issue us instructions under the joint signature of the two traffic officials.

Q. And have you ever known of cases where something is sent back to St. Paul and it just goes into oblivion because apparently they are unable to agree, so nothing is done?

A. No. I think in all cases they resolve their differences, and we receive instructions one way or another.

Q. You have never known of a single case, then, where a matter was considered by the traffic departments in St. Paul and it just died out because they were not able to agree on some affirmative action, is that the way you want the records to stand?

A. There is not one that comes to my mind now. There may have been some in the past that occurred when my predecessors were in my position.

Exam. Dishman: But you don't know of any of your own knowledge?

The Witness: No, sir.

By Mr. Maguire:

Q. In the original draft of your testimony, as shown here, the answer was written up, "I have no doubt that in some cases the initial views of one of the parents differ from the initial views of the other, but in practice they [fol. 3503] resolve their differences before issuing instructions to us so that instructions as we receive them are approved by us." That was the way your manuscript originally read, wasn't it?

A. Where are you reading from, Mr. Maguire?

Q. Bottom of Page 5.

A. That is right.

Q. And at the time you wrote that you were saying that you had no doubt that's what happened, but then you changed it to a positive statement?

A. Well, the reason we changed that to a positive statement is because we knew you would object to that particular phrase.

Q. Yes, I certainly would have. And so, therefore, you made it a positive statement instead of what you originally intended to do, which was a surmise, isn't that true?

A. That is true.

Q. O.K. Have there been cases where the S. P. and S., so far as rates on its own line were concerned—I am not talking about joint rates with companies other than the so-called parent lines—but where rates and charges on its own lines were changed even though the Great Northern and Northern Pacific objected to such changes?

A. I don't recall any. I know that we have desired to make changes in certain rates on our line, and they have objected, and we didn't go through with the adjustment.

Q. Let me call to your mind one specific instance where [fol. 3504] you did go ahead, and that was on certain transit charges in Portland on oil cake and meal, which you deemed were necessary to make some reductions in the transit charges in order to meet Southern Pacific competition, where the two parent lines objected because it would tend to lower their transit charges, but you went ahead, anyway?

A. I am sure we didn't go ahead on that. I remember the boys discussing it, and they had a chain of correspondence with the parent lines, and the change, if it has been made, was on the approval of the parent lines.

Q. But the parent lines did object to it and expressed themselves publicly or in the committee as objecting to it?

A. In the committee, naturally, they object at times, but after the competition pointed out to them and they are acquainted with the subject then they change their mind. They have a right to change their mind after they know the facts. They go into the meeting with 150 sub-

jects, and none of the carriers, including the Milwaukee, are prepared to dispose of some of these subjects without further investigation.

Q. There are times, then, when you can stand right up against the parent lines and talk back to them and they change their minds, aren't there?

A. Oh, I wouldn't call it that. That is placing facts before them that are pertinent and proves that our idea of the change should be approved by them.

[fol. 3505] Q. Well, you needn't accept my terminology at all about talking back to them. But you don't just merely savorily follow their instructions, but you present your views and sometimes persuade them to change their minds, don't you?

A. We all present our views at a committee meeting, and if we didn't correlate our ideas, the rate structure in the Northwest would be in a chaotic condition.

Q. I am talking about your talking to the parent lines. You said this was under correspondence with them at St. Paul without a doubt, and in such matters, and I am not talking about discussion at the North Coast committee meetings, I am talking about discussions between you and your so-called parent lines, you do not hesitate to speak up your mind and to present facts to them, and in cases such as this oil cake transit you have persuaded them to change their minds, have you not?

A. I don't think we would be on the job if we didn't do that.

Q. Sure. In other words, you don't just lie down and accept orders from them, but you give them information and sometimes talk them out of it, isn't that true?

A. Naturally we give them information, if we think it is for the best interest of the entire system.

Q. And talk them out of it, too, or persuade them that you are right?

A. We never talk them out of anything or persuade them in anything that is not proper.

[fol. 3506] Q. Well, of course not. Being souls of propriety, naturally not.

Let me ask you something else, Mr. Ehlen. At the time of this letter of July 1943, which we were talking about,

about industrial matters, Mr. Dixon was then vice-president of the S. P. and S. in Portland, was he not, in 1943?

A. I believe he was. Mr. Dixon came to us in either 1943 or 1944. It was during the war period.

Q. But you did have a vice-president in Portland at that time?

A. We had a vice-president, yes, sir, and general manager.

Q. In Portland?

A. Yes, sir.

Exam. Dishman: Is this a convenient place to stop?

Mr. Maguire: I was just going to suggest that this might be a good stopping place.

Exam. Dishman: We will recess until 9:30 tomorrow morning.

(Whereupon, at 5:05 p.m., a recess was taken until tomorrow, Thursday, April 14, 1955, at 9:30 a.m.)

[fol. 3509]

Transcript of Proceedings—April 14, 1955

Exam. Dishman: On the record.

Mr. Rockwood: Mr. Examiner, during the cross-examination of Mr. Ehlen, Mr. Maguire referred to a memorandum which was attached to a letter, I believe, of 1943 from the—

Exam. Dishman: Yes, is that memorandum correctly identified for the record?

Mr. Rockwood: It was handed to the reporter at the close of the hearing and she took her notes so that there will be a copy of that memorandum in the record at the place where it was referred to in the record, I believe, so it will be in in that way.

We are not supplying additional copies because it will be in the transcript.

Exam. Dishman: All right.

Mr. Maguire: No, I won't require any copies of it as far as that goes or ask for any.

GEORGE F. EHLEN resumed his testimony as follows:

Cross examination (continued):

By Mr. Maguire:

Q. Mr. Ehlen, I would like to discuss briefly with you your testimony with regard to the non-participation of the S. P. and S. in the entire meetings of the Northern Pacific Coast Freight Bureau during the year 1933.

Now, at that time or during that period did the S. P. [fol. 3510] and S. cease to contribute its share to the expenses of the bureau?

A. No.

Q. It still continues?

A. It still continues.

Q. As a matter of fact, what that was, due to changes in personnel and the reorganization of the S. P. and S. forces in Portland which you described, it was not convenient to have a representative in constant attendance at the full session of the bureau, is that correct?

A. I think you will have to qualify what you mean by convenient. We were instructed, as I stated in my former testimony, the S. P. and S. Traffic Department was reorganized to a skeleton force—

Mr. Rockwood (interrupting): Were what?

A. (Continuing) —to a skeleton force by the Great Northern and Northern Pacific. Our organization was cut down to a point where we were to handle our local matters, that is, local solicitation to the S. P. and S. system proper. We refrained from soliciting off our line. The parent meetings were to represent us at the Northern Pacific Coast dock meetings and the rate check meetings but it was found that that was not practical. After the first month we gradually attended more of the meetings.

By Mr. Maguire:

Q. Found after the first month, do you mean that the first month after this decision was reached you were not represented at the meeting directly by your own personnel?

[fol. 3511] A. I did not attend the meetings at that time, Mr. Maguire, and the record is very hazy upon whether we attended the month of February or not, but we did attend the following meetings, as I have found in our correspondence, only for a day or during the time it was necessary to discuss and dispose of our own subjects.

Q. That is, subjects in which the S. P. and S. was interested?

A. Was directly interested, yes.

Q. Yes, directly. During that period, however, the S. P. and S. was still a member of the bureau, was it not?

A. It was.

Q. And also still a member of the executive committee of the bureau?

A. Well, as far as I know we were still a member of the executive committee at that time.

Q. As a matter of fact, so far as you know, the S. P. and S. has been a member of the executive committee since the organization of the bureau, hasn't it?

A. Yes.

Q. Now I wish to refer very briefly to your Exhibit No. 78, which consists of copies of certain papers from the bureau files which were furnished you by Mr. Watson, the chairman of the bureau.

Were these given to you as all of the relevant papers with reference to the organization and consist of the bureau, the conduct of its affairs, since the earliest date mentioned, [fol. 3512] which is March 22 and 23, 1920?

A. These papers represent the formation of the bureau back in March 22, 23, 1920, and all of the amendments to the bureau since that time.

Q. When you say all of the amendments to the bureau—

A. (Interrupting) That is to the articles of the organization of the bureau. If they took in a new member it is shown in here.

Q. I see. That is the purpose of these references to water lines and so forth that appear in this exhibit?

A. That is right.

Q. When you say this exhibit holds all of the papers you mean that it holds what Mr. Watson told you was all the papers?

A. No.

Q. Did you go through the files yourself?

A. No, I didn't go through the files. We just asked him for the original formation of the bureau and all papers leading up to the time the bureau was taken over under the Western Traffic Association agreement. These papers relate to changes in the bureau as time went on from its origin. And it just merely shows the new members, the changes in the allocation of the cost whenever a new member was admitted to the bureau.

Q. And I think you would probably want to qualify your answer which you have just made to the extent that it also contains papers up to a resolution which recited that the member roads had already become parties to the articles of organization and procedure which had been approved [fol. 3513] by the Interstate Commerce Commission?

I am referring specifically to the entry of March 17, 1950.

A. Yes, that is an excerpt of the minutes of the executive committee meeting held in Seattle on March 17, 1950. And the following resolution was adopted.

Q. Yes. What I say is that it goes not only up to the adoption of the articles of organization but also contains what you might call the closing up of the old by-laws—

A. (Interrupting) Yes.

Q. (Continuing) —in view of the adoption of the articles?

A. That is what the minutes state.

Q. That is just what I wanted to make clear. It goes a little bit farther than you originally stated? It goes beyond the adoption of the articles in that you do have this final wind-up resolution, doesn't it?

A. Oh, you must have a final wind-up in the resolution. It merely states here that "whereas the said member ceased to operate under the aforesaid by-laws of the North Pacific Coast Freight Bureau on October 17, 1949."

Q. I gather that your answer to my question is yes?

A. Yes.

Q. Now let's go into your testimony with regard to Article 11 of the Articles of Organization and Procedure.

with particular reference to Section 8 of that Article and [fol. 3514] the proposed amendment of Section 8, Section 8 dealing with voting power concerning which you testified.

Prior to the final adoption by the member roads of the Articles of Organization and Procedure you went over the draft of those Articles, didn't you?

A. No, I did not go over the draft of those Articles, because I was not the presiding officer of the S. P. and S. in Portland at that time.

Q. Presiding officer or you mean the principal traffic officer?

A. Principal traffic officer.

Q. Do you remember that on November 4, 1948, W. J. Bohon, as agent of the North Pacific Coast Freight Bureau wrote a joint letter to Mr. W. H. Dana, chairman of the Western Traffic Executive Committee, and to Joseph H. Hays, Counsel Association of Western Railways, a copy of which letter was received by your railroad, stating that Mr.—

Mr. Rockwood (interrupting): Just a minute. I object to your reading the letter in in the form of a question unless we have a look at it.

Mr. Maguire: Sure, you can have a look at it.

But, of course, if the witness denies any knowledge of it, it will not be evidence and will have to be offered separately anyway.

Mr. Rockwood: I know.

(Question read.)

By Mr. Maguire (continuing):

Q. —that Mr. G. F. Ehlen—

[fol. 3515] Mr. Rockwood (interrupting): Are you going to read it verbatim?

Mr. Maguire: No, I am not.

Mr. Rockwood: I have no objection to your putting it in the form of a question if you will read the letter verbatim, but I object to your summarizing the contents of a letter.

Mr. Maguire: I don't have to read a letter out loud to determine whether the witness knew of such a letter having been written. I can give a description of the letter.

Exam. Dishman: Well, could you show the witness the letter?

Mr. Maguire: Yes, I will be glad to show him the letter, but I do wish to describe the contents and then I can show it to him to refresh his memory. But I see nothing wrong.

Exam. Dishman: All right, proceed, so long as the witness may see the letter.

By Mr. Maguire:

Q. Yes, I will show you the letter before you answer the question, Mr. Ehlen, stating that Mr. G. F. Ehlen, General Freight Agent of the S. P. and S., after looking over the draft of Articles of Organization and Procedure suggested that the list of member lines, as shown in the draft in Article 11, be amended so as to include the Oregon Electric Railway Company and the Oregon Trunk Railway as a part of the S. P. and S. system in order that the immunity from prosecution under the Anti-Trust laws would fully cover the S. P. and S. system and its subsidiary lines.

[fol. 3516] I will show you the letter. I will ask you whether that is in substance the first paragraph of it.

A. If Mr. Bohon wrote that letter to Mr. Dana and quoted me as making that statement I can't deny it, but I don't recall it. We cover thousands of subjects.

Q. Do you recall whether or not you did go over the Articles of Organization?

A. Mr. Moore, who was then the Traffic Manager, and I went over the Articles of Organization. The Articles of Organization were merely gone over by all of the carriers, but the final—

Q. (Interrupting) Just a moment. You are not answering any question when you make that statement.

Mr. Maguire: I move those comments be stricken.

Exam. Dishman: Do you understand the question?

The Witness: I understand the question, but this is just a preliminary to what happened to the Articles of Organization. They just went over them to see whether they were satisfactory or not and then the actual Articles were consummated by the presidents of the railroads.

By Mr. Maguire:

Q. But the actual draft as executed by the presidents of the railroads did not differ from the draft that you gentlemen agreed upon as satisfactory, did it?

A. I don't know. That was a matter far over our heads when it came to us, I admit that.

Q. But you gentlemen naturally went over, particularly [fol. 3517] Article 11, which dealt with the North Pacific Coast Freight Bureau, you went over that before you recommended to your principals that it be adopted, did you not?

A. We must have, because if that letter was written, we certainly went over the Articles.

Q. Do you have in your possession—I want to go on to the question of this action which has been taken to amend Section 8 of Article 11—a copy of the letter addressed to Mr. W. R. Watson, Chairman, North Pacific Coast Freight Bureau, by Messrs. Nicholson, who was Western Traffic Manager of the Great Northern Railway, and Cleveland, who was Western Freight Traffic Manager of the Northern Pacific Railway, with respect to the proposed amendment? Do you have that before you?

A. I have, sir.

Q. I wish to read to you the first paragraph, and you can check me: "Through a misunderstanding or oversight on the part of those that prepared the Articles of Organization and Procedure for the North Pacific Coast Freight Bureau (Article II of the Western Traffic Association Agreement) some question has arisen as to whether under the present wording of Section 8 of Article 11 of the agreement the S. P. and S. (including the Oregon Electric and Oregon Trunk Railway) is entitled to a vote at our Committee's."

That is the end of the matter which I am quoting from this letter of November 10, 1954.

[fol. 3518] Did anyone at any time ever challenge the right of the S. P. and S. to exercise any vote whatever as a member of any committee of the North Pacific Coast Freight Bureau?

A. Not that I know of.

Q. So then if any question has arisen it was not aroused by any challenge to your right to vote, was it?

A. Through the testimony of Mr. Engel.

Mr. Rockwood: In this case?
The Witness: In this case.

By Mr. Maguire:

Q. Did Mr. Engel challenge your right to vote? Didn't he say you have the right to vote?

Mr. Rockwood: That is objected to as argumentative. The record will speak for itself.
Exam. Dishman: He mentioned Mr. Engel's testimony. What did you understand it to cover in that respect?
The Witness: He brought out in his testimony, as I recall it, that we were not under common management or control because we had voting rights.
Exam. Dishman: Well, the record will speak for itself on that.

By Mr. Maguire:

Q. Was that a challenge to your right to vote?

Mr. Rockwood: Just a minute. I object to that as argumentative.
Mr. Maguire: The witness claimed it was a challenge and I am trying—
[fol. 3519] Mr. Rockwood (interrupting): He didn't talk like that. He said no questions was raised except as it was raised by Mr. Engel. Now, the extent to which it was raised by Mr. Engel will be determined from the record, and I object to argumentative questions.
Mr. Maguire: As a matter of fact, Mr. Examiner, counsel has inadvertently misquoted my question, because my question was has it ever been challenged, not questioned, and he said it was challenged by Mr. Engel.
Mr. Rockwood: No.
The Witness: Mr. Examiner, he asked me that question before and I told him not that I know of, and then this other question came up with respect to Mr. Engel's testimony in the record.
Exam. Dishman: You see, you referred to that, you must have had some reason for referring to Mr. Engel's testimony. That is what he is trying to get at, I suppose.

Mr. Rockwood: And that's been answered.

Exam. Dishman: Yes.

Mr. Maguire: It has been answered in part. I want to pursue it further. The witness brought this into the case, I didn't do that, and I think I should have the privilege of finding out just upon what considerations he bases this conclusion. He has stated a conclusion that a question was raised or a challenge raised—the wording doesn't make any difference—by Mr. Engel's testimony.

[fol. 3520] By Mr. Maguire:

Q. Now, Mr. Engel in his testimony did not at any time say you did not have the right to vote, did he?

A. He did not.

Q. And as a matter of fact, this entire procedure for the amendment of the Articles of Incorporation is to rid yourself and to rid the St. Paul companies of any embarrassment arising out of the fact that the S. P. and S. has over the years voted as a full member of the committee even though the Articles of Incorporation say that where two or more companies are under common management or control there shall be only one vote? Wasn't that the purpose of this amendment?

A. The purpose of this amendment was not originated by me.

Q. Yes.

A. And there are instructions that were issued to Mr. Watson by Mr. W. E. Nicholson, Western Traffic Manager of the Great Northern in Seattle and Mr. F. A. Cleveland, Western Traffic Manager of the Northern Pacific in Seattle. All of the action took place when we were at the Chicago meeting so I really don't know. I did not attend the meeting and I don't know what happened except the final decision that was reached and being passed along to Mr. Barron. The final finality of it was that the amendment was passed along to Mr. Barron for processing with the Interstate Commerce Commission.

Q. You would prefer not to speculate on the motives of Messrs. Cleveland and Nicholson?

[fol. 3521] A. I am not going to speculate.

Q. All right, I won't ask you to. As a matter of fact, upon the filing of this petition by Mr. Barron, under the instructions from the North Pacific Coast Freight Bureau, the Milwaukee road filed a protest, did it not?

A. I don't know anything about a protest being filed.

Q. You have never seen it?

A. I have never seen it.

Q. Though a copy was served upon your company?

A. It may be in the files in Portland. I really haven't seen it. I have been too busy with this affair right here.

Q. I don't think I will belabor that any further with you, Mr. Ehlen.

But Mr. Engel's testimony was the spark which set this fire going, wasn't it?

A. I imagine it was.

Mr. Rockwood: That is not speculation, is it, Mr. Ehlen?

By Mr. Maguire:

Q. You aren't guessing as to that, are you?

Mr. Ehlen, I'd like to go back to the question of divisions which we discussed briefly yesterday. Do you recall testifying before an examiner of the Interstate Commerce Commission in a proceeding entitled Inland Navigation Company vs. The Big Creek and Telocaset Railroad Company, I.C.C. Docket 29458?

A. Yes, I put a lot of testimony in that case.

Q. And do you recall discussing the S. P. and S. divisions [fol. 3522] on grain which had originated on the Northern Pacific and which, judging from the question, the S. P. and S. received at Pasco, Washington?

A. Yes, I remember that.

Q. Do you recall stating, testifying, as follows: "That division was originally agreed upon in the year 1910 after considerable negotiations"?

Do you recall making that statement?

A. Yes, I recall that.

Q. With whom were those negotiations held, with what company?

A. In 1910 I was not with the S. P. and S. And as far as the negotiations are concerned, I could not give you the

precise—I mean the names of the parties that negotiated but they were negotiated naturally with the Northern Pacific.

Q. Yes, and by considerable negotiations—what do you mean by the phrase "by considerable negotiations"?

A. Well, the negotiations came by—now, this is just from the files and from my memory—the Northern Pacific Grain was handled via—

Q. (Interrupting) If you will pardon my interruption, Mr. Ehlen, I am not asking you to go into the details of the negotiations or the substance of them but when you use the descriptive word "considerable" what did you mean? Did you mean long, drawn out negotiations?

A. Yes, they were long, drawn out negotiations, but we [fol. 3523] will have to get to the basis of it if the record is going to be clear.

Q. Just a moment. That can be brought out by counsel if he wishes on redirect examination, if he deems it important, but the fact that I am trying to arrive at here is that the S. P. and S. negotiated with the Northern Pacific. After what you have characterized as considerable negotiations they reached an agreement as to the divisions the S. P. and S. had received, is that a fair statement?

A. Yes, it is a fair statement. You must confer on every division to reach an agreement.

Q. And that is what you do, you negotiate on all divisions, don't you, except those which are set by a basic general agreement?

A. Yes, we negotiate divisions with all lines, including our parent lines.

Mr. Maguire: Thank you very much, Mr. Ehlen, that is all I have.

Mr. Cockrum: I have a couple of questions.

Exam. Dishman: All right, Mr. Cockrum.

Cross examination.

By Mr. Cockrum:

Q. On your Exhibit No. 84, in connection with it, you stated, as I recall it, that you don't get any of the potato

traffic from Benton and Franklin, Washington, counties, those points being on the Northern Pacific and Benton also being on the Union Pacific. You don't mean to imply by that [fol. 3524] answer, however, that you wouldn't get traffic if the joint rates and through routes in this case were granted by the Commission, do you?

A. We just do not handle potatoes from that territory. We producers have no loading facilities on our line, and in all the years I have worked for the S. P. and S. I have never known of a carload of potatoes moving from that territory via the S. P. and S. to any destination.

Q. You don't mean to imply in this exhibit that you wouldn't get additional traffic in connection with these commodities, all of them, if you were not under the present rate disability by the Milwaukee?

A. We have no rate disability. The producers in our territory have ample markets today to market all of their produce under the present scale of rates with other carriers.

Q. Now looking at the Exhibit No. 77, is Bend, Oregon, on the Oregon Trunk?

A. Bend, Oregon is on the Oregon Trunk, the Great Northern and the Union Pacific.

Q. How about Redmond?

A. Redmond is on the Oregon Trunk and the Union Pacific.

Q. How about Madras and Metolius?

A. You can save a little time, Mr. Cockrum, if I make one broad statement that every point between Wishram, Washington, and Bend are served jointly by the Union [fol. 3525] Pacific and the Oregon Trunk, the same station agents and the same facilities are used by both of the carriers at all of those stations.

Q. You mentioned witnesses Palmer and Bailey yesterday, I believe, and their grain movements, I think, to, where was it, Astoria?

A. Astoria, yes.

Q. Those two witnesses can now, I suppose, ship their grain to Astoria under the present combination of local rates, can they not?

A. No, not on combination of local rates. There has been no rate application for grain in Astoria. The Pills-

bury Flour Mills, if they desired to move grain from Montana, they would have made application to us for the rates long ago, and I have testified that, if an application is presented to us, we would gladly consider it and if there is a public need for the rates on grain to Astoria they will be published through the regular process.

Q. You mean an application for joint through rates?

A. Yes, joint through rates.

Q. There are local rates presently available, I suppose, are they not, to shippers to Astoria?

A. There is not a through rate available.

Q. Well, no, not a through rate. But they could ship their grain to Astoria now under the present local rates?

Mr. Maguire: You mean is there a local rate to Portland [fol. 3526] and also a local rate on the S. P. and S. from Portland to Astoria?

Mr. Cockrum: That is right.

Mr. Rockwood: Are there such rates?

The Witness: Local rates from Portland to Astoria, yes.

By Mr. Cockrum:

Q. Is there a local rate from Spokane to Astoria via the S. P. and S.?

A. There is a local rate from Spokane to Astoria, yes.

Q. So that witnesses Bailey and Palmer could today move their grain to Portland and Astoria via the S. P. and S. if they were willing to pay the higher, applicable higher, local rates?

A. Well, that is not—they just don't do that. The grain shippers are not going to pay local rates over any point to reach a market. That is the reason that they entered this case to negotiate, to assist them in having through rates.

Q. That is true—

Mr. Maguire (interrupting): Pardon me just a minute, Mr. Cockrum.

Mr. Cockrum: Yes.

Mr. Maguire: Could I ask a question for clarification there?

Exam. Dishman: All right.

Mr. Maguire: You mean that is what you assume is their motive?

The Witness: That is what I assume, sure. It would have to be an assumption on my part.

By Mr. Cockrum:

Q. Is there presently a parity of rates on certain commodities, at least, between S. P. and S. system points [fol. 3527] and Milwaukee and Great Northern common points east of Spokane via the S. P. and S. and the G. N. and via the S. P. and S. and Milwaukee through Spokane?

A. We have some through rates on certain commodities, such as hay. Those are prescribed under the seventeen thousand case. We joined the Milwaukee in some rates on petroleum from East Pasco. A few years ago we also joined them on a rate on crude petroleum from Baker, Montana, to Willbridge, Oregon. We have been willing to join the Milwaukee on rates from their local territory where bona fide application has been submitted to us.

Q. Where there isn't now a parity of rates between those points and over those routes through Spokane, are the rates via the S. P. and S. and Milwaukee in each instance higher than those via the S. P. and S. and Great Northern?

A. Well, if there is a rate via another route, naturally they would be higher. They wouldn't use our route.

Q. You mean, then, that the rates via the S. P. and S. and Milwaukee are higher wherever there is not a parity of rates?

A. Well, the route is just not used, Mr. Cockrum, on traffic and through rates are published when there is some need for them.

Q. That isn't my question, Mr. Ehlen.

A. I just don't know what you are getting at. In rate making we publish through rates when there is a public need and the necessity for it. The scale of rates between Montana and Milwaukee territory and Portland has always [fol. 3528] been with the Union Pacific.

Q. Yes, and you have testified that with respect to some commodities there is now a parity rate?

A. It would be parity rates on commodities wherever we have through rates but the rates we do have with the

Milwaukee are usually from points, and I will give you an illustration, East Pasco, Washington, where there is a bulk petroleum terminal. The Milwaukee desired to participate in some of that traffic. There was a need for the publication of through rates from East Pasco to points east of Spokane and we joined the Milwaukee, and that will be the pattern in the future.

Q. If shippers desire to ship from S. P. and S. system points to points on the Milwaukee east of Spokane which are common with the Great Northern and with respect to which there is not a parity of rates with the S. P. and S. and Great Northern, they may ship via the S. P. and S. and the Milwaukee if they are willing to pay the higher local rates, I presume?

A. Well, I never have had an example like that placed before me. No shipper has ever offered us a shipment to move to a Milwaukee point, so I am not going to speculate on that.

Q. Well, at least the route is there for them to use if they desire, isn't it?

A. The route is there for them to use wherever there are through rates published.

Q. Well, even in the absence of joint through rates, if [fol. 3529] they are willing to pay the higher local rates, they may pay those higher local rates and make this shipment?

A. We have never had any traffic like that offered to us so I am not going to speculate on what we would do.

Q. The same situation would be true with respect to points east of Spokane which are common with the Northern Pacific and the Milwaukee, too, wouldn't it?

A. I am not able to testify about shipments from the Northern Pacific to the Milwaukee.

Q. Is there a parity of rates, then, on certain commodities between S. P. and S. points and Milwaukee and Northern Pacific points, common points, east of Spokane, via the S. P. and S. and the Northern Pacific and via the S. P. and S. and Milwaukee through Spokane?

A. What is your question?

You said if there was a parity of rates?

Exam. Dishman: He asked is there.

Mr. Cockrum: Will you read it, please?

Exam. Dishman: Is there a parity of rates?

By Mr. Cockrum:

Q. Is there a parity of rates on certain commodities between S. P. and S. System points and Milwaukee and Northern Pacific common points east of Spokane via the S. P. and S. and Northern Pacific and via the S. P. and S. and Milwaukee to Spokane?

A. Yes, there is a parity of rates on some commodities. [fol. 3530] Q. And similarly there, if the shippers wanted to use the Milwaukee and where there is not presently joint through rates with the Milwaukee between those points, the shippers can use the Milwaukee between those points, the shippers can use the Milwaukee if they are willing to pay the higher local rates through Spokane?

A. I will still say we have not had a shipment offered to us under those conditions.

Exam. Djshman: Well, the route is there if they wanted to make a shipment over that joint route?

The Witness: The route is there with through rates and routes. We have through rates with them. Where the through rate is not available we are willing to join the Milwaukee in their through rates to local territory.

Mr. Torinus: When you use the word through routes and through rates do you refer to joint through rates?

The Witness: Yes, joint through rates.

Mr. Torinus: Thank you.

Mr. Cockrum: Mr. Examiner, yesterday Mr. Ehlen gave some testimony from a U.S.D.A. publication relating to the production of potatoes in Oregon, Washington, and Idaho during 1953. I would like to have this entire publication placed in evidence in the case, if I may.

Exam. Dishman: You mean as an exhibit?

Mr. Cockrum: As an exhibit.

Mr. Rockwood: May I understand, is that the publication from which he quoted in giving the car unloadings at [fol. 3531] Sioux City, Iowa?

Mr. Cockrum: Yes.

Unfortunately I don't have enough copies at this time for distribution. I wonder if I could get the copies in the meantime and put the publication in evidence at the further hearing?

Mr. Rockwood: How many do we have right here now, Mr. Ehlen?

The Witness: Several.

Exam. Dishman: Do you have at this time a copy for the reporter and one for me?

Mr. Cockrum: I think so.

Exam. Dishman: Then you can furnish the other parties?

Mr. Rockwood: May we go off the record.

Exam. Dishman: Yes, let's go off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

Mr. Rockwood: We have a very limited supply, Mr. Examiner, of the compilation that Mr. Ehlen referred to when he talked about marketing Northwestern—

Exam. Dishman (interrupting): I don't believe Mr. Cockrum is hearing this.

Mr. Rockwood: We are on the record now.

May I start again?

Exam. Dishman: All right.

Mr. Rockwood: We have a very limited supply, Mr. Examiner, of the document that Mr. Ehlen referred to as [fol. 3532] marketing Northwestern potatoes by Carl J. Hansen.

Mr. Maguire: What is the date of it, Mr. Rockwood?

Mr. Rockwood: At the bottom of the page, July 1954. And this is the document from which Mr. Ehlen quoted when he gave the car unloadings at Sioux City, Iowa. I had not planned on putting this in evidence but I am quite willing that it should be in the record, so for the convenience of the parties I ask that this be marked as Exhibit No.—

Exam. Dishman (interrupting): No. 109.

Will that be defendant's exhibit, Mr. Rockwood?

Mr. Cockrum: It will make no difference to me.

Mr. Rockwood: I don't know.

Mr. Cockrum: Do you want to put it in as yours?

Mr. Rockwood: Oh, I will call it my exhibit.
Exam. Dishman: All right, Defendant's Exhibit No. 109.

(Defendant's Exhibit No. 109, Witness Ehlen, was marked for identification.)

Mr. Rockwood: You have a copy, Mr. Cockrum?
Mr. Cockrum: Yes.
Mr. Rockwood: You have a copy, have you, Mr. Maguire?
Mr. Maguire: I have.
Mr. Rockwood: Do you have an additional copy, Mr. Ehlen?
The Witness: I have one.
Mr. Maguire: May we go off the record?
Exam. Dishman: Off the record.

[fol. 3533] (Discussion off the record.)

Exam. Dishman: On the record.
Defendant's Exhibit No. 109 is received in evidence.

(Defendant's Exhibit No. 109, Witness Ehlen, was received in evidence.)

Mr. Cockrum: That is all I have, Mr. Examiner.
Mr. Maguire: Just one question here.
Exam. Dishman: All right.

Further cross examination.

By Mr. Maguire:

Q. Mr. Ehlen, I would not have brought this up except that you raised it in your answer in answer to questions to Mr. Cockrum. With reference to the rate which the S. P. and S. entered into with the Milwaukee on crude oil from Baker, Montana, isn't it a fact there that one of the Northern lines was opposed to your entering into this through rate and the other one had no objection?

A. Yes, they objected, but again they resolved their differences and permitted us to join in the rates.

Q. In other words, with the approval of one of them, even though the other one did not at first, you went ahead with it, or is that true or did you get clearance from both of them?

Mr. Rockwood: He answered differently than that.

Mr. Maguire: I just asked him. I am not trying to trap him. I said or did they all agree at first.

Mr. Torinus: May I have that question read, please?

[fol. 3534] (Question read.)

Exam. Dishman: Did you answer the question?

Mr. Torinus: I have no objection to the question.

Mr. Maguire: I didn't think you would.

Exam. Dishman: Just state what happened.

A. We received clearance from both of them.

Mr. Rockwood: Before you published it?

The Witness: Before the rate was published.

By Mr. Maguire:

Q. The rate which you just spoke of from East Pasco to points on the Milwaukee, which the S. P. and S. entered into, what destination territory of the Milwaukee was involved?

A. It was mostly Milwaukee local territory, except one point, as I recall, Coeur d'Alene, Idaho, was the last point we published rates to on petroleum products, and before that rate was published we received approval from both the Great Northern and Northern Pacific. It developed that they could not participate in the traffic therefore they permitted us to publish the rate with the Milwaukee.

Q. It took both of them, the joint action of both of them, or approval of both of them before you could go ahead, didn't it?

A. Oh, no, it didn't. The Northern Pacific had the connection, I believe, the Great Northern didn't, or it may have been vice versa, but we received approvals from both of them. We wrote them both separately, the Northern Pacific first, and received their approval, in that case they both didn't get together.

[fol. 3535] Q. As I say, you had to get clearance from both of them before you could go ahead, didn't you?

A. Yes, we did.

Mr. Maguire: I think that is all.

Redirect examination.

By Mr. Rockwood:

Q. Since yesterday when Mr. Maguire was asking you with respect to transit privileges on forest products moving eastbound over the route Southern Pacific, Union Pacific, Spokane, Milwaukee—or excuse me—Southern Pacific, Union Pacific, Marengo, Milwaukee or Union Pacific, Marengo, Milwaukee, have you checked to determine whether there are any transit privileges permitted west of Marengo on the Union Pacific or Southern Pacific?

A. Yes, there are transit privileges published in North Pacific Coast Freight Bureau, Local Freight Tariff 122-B, I.C.C. 877, on lumber, poles, posts, piling, and other articles, when creosoting or preservatively treated in transit. The transit point on the Union Pacific is shown as is St. Johns, Oregon, and there is also a—pardon me, strike that. That transit application is in Item 4675 of the tariff that I just named, and in Item 4880 there is another item that applies, and the shipments may be treated in transit at those points and forwarded to points in connection with the Milwaukee at Marengo.

Mr. Maguire: You said at those points?

The Witness: Yes, the two creosoting points on the [fol. 3536] Union Pacific, The Dalles and St. Johns, Oregon.

Mr. Maguire: For clarification does Item 4675 apply to creosoting at The Dalles as well as with St. Johns?

The Witness: The Item 4675 in the tariff is confined to St. Johns, Oregon, only, and 4880 shows Dufur, Oregon and The Dalles, Oregon. I didn't name Dufur, because I don't believe there is much operation there. The Dalles is the main creosoting point.

By Mr. Rockwood:

Q. Yesterday there was some discussion of the exercise by the S. P. and S. of the privilege of discussing and expressing its views to the parent lines with respect to rate making matters and policies. Are there ever any instances where both of the parent lines are opposed to something which

the S. P. and S. suggests, and after you have exercised your privilege of discussing the subject with the parent lines you have been able to change the minds of both of them?

A. Yes.

Q. Have you an example of that?

A. In 1951 or '52 we had a loss of grain by truck from central Oregon points, what I mean is Madras, Oregon, for illustration, the truck lines have a short route over the so-called Wapinitia Pass to Portland. We were gradually losing the grain from that territory and to such a volume it was alarming, so I discussed with Mr. George King of the Great Northern and Mr. Cleveland of the Northern Pacific, traffic representatives in Seattle of the two parent lines, and told them I thought we should make [fol. 3537] some adjustment in our grain rates. They informed me that we should not because it might break down the entire grain structure in the northwest. However, they did agree that we place the subject on the docket for discussion by all lines. I was attending the meetings at that time. The subject was placed on the docket, and when it came up for discussion I was outvoted by the entire membership, including the Union Pacific, the Milwaukee, the Great Northern, and the Northern Pacific. However, they did state we will go along with you for another year and if your loss continues to increase, then we can give it further consideration.

I believe it was either in January of '52 or January of '53 I placed the subject back on the docket and proved to them that we should make a spot adjustment from our own local territory as we were in the transportation business, and we should meet competition, if at all possible to do so, and still have enough revenue left to come out over out-of-pocket costs. They agreed—

Q. (Interrupting) Who agreed?

A. The Great Northern and Northern Pacific agreed that we place the subject back on the docket, and it was approved by all lines. We proved by that adjustment that it was worthwhile, because we increased our movement approximately 140 cars in a year after the rate adjustment was made.

Q. Was that approval that you referred to by the [fol. 3538] Northern Pacific and the Great Northern traffic representatives before it was placed on the Northern Pacific Coast docket the second time?

A. Oh, we received their approval before it was placed on the docket the second time.

Q. You yesterday testified that in some cases the initial views of one of the parent lines differs from the initial views of the other, but in practice they resolve their differences before issuing instructions to the S. P. and S., so that instructions when received are approved by both. Can you give us an example of the initial approval by the one parent line of a proposal the initial disapproval by the other parent line of that proposal, and tell us what the ultimate outcome of that matter was?

A. I have one example in mind and that was the leasing of some property at our terminal in Portland upon which the Superior Fast Freight Company, which is a forwarding company, desired to build a warehouse. The Superior Fast Freight Company operates from Los Angeles to Portland and Seattle. The leasing of this property would not give the Northern Pacific the haul on any tonnage, and the Northern Pacific did not approve the leasing of the property to the Great Northern.

Q. Did not approve the leasing of the property?

A. I mean to the Superior Fast Freight. However, after carrying on considerable negotiations, we proved that it would result in the Oregon Electric receiving some traffic because we meet the through rates of the Southern Pacific [fol. 3539] from Los Angeles to points like Eugene. After the further negotiation was carried on the Northern Pacific agreed to the leasing of the property to the Superior Fast Freight.

Q. Did you enter into a lease before you had the approval of both parent lines?

A. No, we did not.

Q. You have used the word "negotiation". What do you mean by the word negotiation with the parent lines?

A. Well, we just simply write to them and state the facts. I imagine it is just a matter of placing a proposal before them for their disposal.

Q. And whose is the decision as to whether a proposal shall be approved or disapproved? Is it your decision or the parent lines?

A. It is the decision of the parent lines.

Q. And that is what you mean by negotiation with the parent lines?

Mr. Maguire: Could I have that last answer and question read, Mr. Examiner?

Exam. Dishman: Yes.

(Question and answer read.)

Mr. Maguire: I will let that argument in for what it is worth.

A. The answer is yes.

By Mr. Rockwood:

Q. That is what you meant by negotiations when you used your testimony in the navigation case that Mr. Maguire quoted? Were you using negotiation in the same sense? [fol. 3540] A. We do all the way through.

Q. That is what you mean by negotiations?

Mr. Maguire: Are you leading him or asking him? I think those are very leading questions.

Exam. Dishman: He has already stated what he meant by negotiation.

Mr. Maguire: Counsel has told him what he meant, and he has agreed with him.

Mr. Rockwood: He defined it quite well without very much leading, Mr. Maguire.

Exam. Dishman: Proceed.

By Mr. Rockwood:

Q. Do you have conferences and discussions with any officials of the Northern lines traffic department's officials at the west end of the line at Seattle?

A. We have continuous discussions and conferences with them. There is hardly a month goes by that both of them do not come into my office and discuss matters of various kinds.

Q. Who are the traffic representatives at the west end at the present time of the Northern lines that you so discuss matters with?

Mr. Maguire. Just a moment, please, Mr. Ehlen.

I object to this line of questioning. This is all matter which has been or should have been brought about in the presentation in chief of this witness.

Mr. Rockwood: As a matter of fact—

[fol. 3541] Mr. Maguire (interrupting): There was nothing raised by cross-examination which would justify this line of examination at the present time about the personnel of the traffic department of the so-called parent lines at Seattle or what negotiations are carried on with the parent line. There was no questioning of that kind on cross. This is just simply a reiteration of the direct testimony of this witness.

Mr. Rockwood: This all goes to the cross-examination of Mr. Maguire of Mr. Ehlen when he was raising some question as to initial disputes between the parent lines which were resolved by them so that instructions as they come to the S. P. and S. are joined in by both, and I was giving, first, the example of handling a matter at St. Paul such as this leasing.

Now I want to give an illustration of the handling of matters in such ways by west end officials.

Mr. Maguire: It is entirely a matter of complete indifference as to which representatives of the Great Northern and Northern Pacific arrive at the final decisions in the matter. The question which counsel has been trying to bring out is as to whether or not the two so-called parent lines have the final decision. It is just absolutely a matter of indifference and I object at this point as to the exact individuals in the employ of the so-called parent lines who reach these decisions. The final ultimate point has been made by them and there is no sense in belaboring it, and it is not proper redirect examination.

[fol. 3542] Exam. Dishman: Well, I will let the witness answer for what it might be worth.

By Mr. Rockwood:

Q. Who are the two west end traffic officials with whom you deal?

A. Well, the two that we deal with mostly are George King, who is General Freight Agent of the Great Northern, and Mr. Frank Cleveland, Western Freight Traffic Manager of the Northern Pacific.

Q. All right, are there periodic—how often do you get together with them to talk?

A. Well, it could be once a month or twice, or once every two months. They have their regular committee meetings in Seattle the second Tuesday in each month. During that month usually the chairman of the bureau calls a special meeting at Portland, and it is hardly a time when they attend the special meeting that we do not get together. They call at my office and discuss matters and we try to dispose of them across the table.

Q. In those discussions are the views of Mr. King and Mr. Cleveland always identical?

A. Oh, they are not always identical.

Q. What is the outcome of those discussions so far as the S. P. and S. is concerned?

Mr. Maguire: Just a moment.

Exam. Dishman: It is quite general, isn't it?

Mr. Rockwood: I know it is but I am just trying to [fol. 3543] portray a course of practice.

Mr. Maguire: This same point has been belabored by counsel and the witness. I think this is at least the third time that it has been gone over in one disguise or another. Now, I think it is about time that that line of inquiry be curtailed.

Exam. Dishman: Could you ask a specific question, Mr. Rockwood?

Mr. Rockwood: Oh, sure, I could but I will be charged with leading.

By Mr. Rockwood:

Q. Do those gentlemen disagree in the first instance in discussions with you and arrive at a conclusion in which both of them can join?

Mr. Maguire: That is leading, but the whole thing has been discussed between counsel and the witness and I don't think I am going to make any objection.

A. The answer is they do.

Mr. Rockwood: That is all.

Mr. Maguire: I have a couple of questions on re-cross.

Exam. Dishman: All right.

Recross examination.

By Mr. Maguire:

Q. In connection with the question of the grain from eastern Oregon to Portland, Madras, I believe it was—.

A. Central Oregon.

Q. Central Oregon, yes. You did not accept, then, the initial decision of the so-called parent companies, but, again [fol. 3544] presented your views to them as to the advisability of those rates, did you not?

A. Oh, I think I thoroughly explained that—

Q. (Interrupting) Will you answer the question, please?

Mr. Maguire: Read the question.

(Question read.)

By Mr. Maguire:

Q. I wish you would add in that question did not accept as final the decision of the two parent companies.

A. Oh, no, if we accepted it as final we certainly wouldn't be doing our duty, Mr. Maguire.

Q. Surely.

A. Naturally if we feel it is to our benefit to pursue a subject we do pursue it.

Q. In other words, you just do not sit down and permit the so-called parent companies to tell you how to handle your rates without making a vigorous defense of your policies, isn't that true?

A. Why, sure, it is true. They wouldn't have me there if I didn't present my views.

Q. You bet they wouldn't. On this controversy which arose about the leasing of property to a carloading company, what was finally done about it? I have forgotten the—

A. (Interrupting) They both agreed that we should lease the property.

Q. Yes. But did the Great Northern expect to get any [fol. 3545] business out of the carloading?

A. They are the ones that were going to get the business.

Q. Yes. But unless the N.P. agreed to this lease, the Great Northern as a half-owner could not insist that the S. P. and S. take any action which would promote the interests of the Great Northern only, could they?

Mr. Torinus: I will object to that as calling for a legal conclusion. The witness can say what was done, and I think he has said what was done, but what could have been done, I think, calls for a conclusion, and it is improper questioning.

Mr. Maguire: Under counsel's guidance this witness has been indulging in nothing much else as to legal conclusions as to what he could do and could not do under his arrangement.

Exam. Dishman: I think the witness has covered this.

You have stated time and time again, haven't you, that you wouldn't receive instructions of one carrier, one of the parent lines, unless they do resolve their differences?

The Witness: That is right.

Exam. Dishman: And they both join?

The Witness: That is right.

Exam. Dishman: Isn't that your answer?

The Witness: That is my answer.

By Mr. Maguire:

Q. Your answer is that you would not have leased that at the instance of the Great Northern, even though the Great Northern would have benefited by it, unless the [fol. 3546] Northern Pacific would go along with it?

A. That is right.

Q. Now I want to direct your attention to your answers to Mr. Rockwood's questions as to the definition of your use of the word negotiations as used by you in testifying in the Inland Navigation Company case.

Do you mean to tell me, Mr. Ehlen, that these negotiations involving divisions between the Northern Pacific and

the S. P. and S., that the Great Northern sat in on that and then finally told you what you could get?

A. The Great Northern didn't sit in on it as far as I know. Now, they may have. Now you are talking about subjects in 1910.

Q. You gave your own definition of it. Do you mean by that that the Great Northern did sit in on these negotiations?

A. I don't know. It is before my time and I can't testify as to what happened in 1910. I wasn't even working for the S. P. and S.

Q. You have given Mr. Rockwood your definition of what those negotiations consisted of. I want to find out what you are talking about.

Mr. Rockwood: He used the word negotiations in testimony.

Mr. Maguire: In testimony that he offered in the Inland Navigation Company case, that was your question.

By Mr. Maguire:

Q. All right, when you used that word negotiations, did you mean that the Great Northern sat in and made a [fol. 3547] decision in connection with divisions between the S. P. and S. and the Northern Pacific.

A. No, sir.

Q. In other words, those were straight negotiations between your company and the Northern Pacific and that's the way you understand it, isn't that right?

A. That is my understanding.

Q. Sure.

Mr. Maguire: That is all I have. Thank you.

Mr. Cockrum. Mr. Examiner, I overlooked one question on cross which I wonder if I might ask.

Exam. Dishman: Go ahead.

Further cross examination.

By Mr. Cockrum:

Q. You testified in connection with solicitation by your S. P. and S. traffic representatives that they solicited traffic, local traffic.

Do your solicitors solicit traffic for movement beyond S. P. and S. lines?

A. We solicit traffic for movement in connection with the Northern Pacific and Great Northern at competitive points. We don't need to solicit traffic from our non-competitive points. Our solicitation is confined to the competitive points.

Q. But they do, then, solicit traffic for shipment outbound over the N.P. and G.N. to eastern points?

A. Yes, we do.

Mr. Cockrum: That is all.

[fol. 3548] Mr. Maguire: Could I have the Examiner's indulgence. There is just one question I overlooked on recross, further recross.

Further recross examination.

By Mr. Maguire:

Q. You mentioned the transit privileges that were available on shipments of lumber and forest products, though I believe there were none on lumber that you mentioned, they were on poles and pilings and things of that sort, over the Marengo route, that is, on the Union Pacific west of Marengo.

Did you find any other transit privileges than those you specifically mentioned?

A. No, I haven't found any others.

Q. Have you looked for others? You looked for others, didn't you?

A. I haven't looked for others, no.

Q. You mean you just stopped when you got two?

A. This is just an example that you did have rates from the Union Pacific on these particular commodities.

Q. Now, Mr. Ehlen, if we had had a general, if shippers over that route had had a general, full line of transit privileges by the Union Pacific you wouldn't have stopped just by giving those two examples on poles and piling, would you, and ties?

A. All we were talking about before was forest products, and I testified yesterday that the transit privileges, that is, the milling in transit—what I meant by transit privileges, milling in transit, creosoting in transit, all they do with [fol. 3549] lumber, the rates do not apply via the Marengo Gateway.

Q. So you were just dredging up the only ones you could find there?

A. We found one.

Q. Just one?

A. That is right.

Mr. Maguire: That is all.

Exam. Dishman: Anything further?

Mr. Rockwood: I have nothing more.

Exam. Dishman: Yesterday Exhibits 89 to 108 were received in evidence. Are there any objections now to the receipt of the Exhibits 76 to 88, inclusive?

Mr. Maguire: No, I have no objections.

Exam. Dishman: Exhibits 76 to 88 are received in evidence.

(Defendant's Exhibits Nos. 76 to 88, inclusive, Witness Ehlen, were received in evidence.)

Exam. Dishman: The witness is excused.

(Witness excused.)

Exam. Dishman: We will take a short recess.

(Short recess.)

[fol. 3550] Exam. Dishman: On the record.

Who is the next witness, Mr. Torinus?

Mr. Torinus: Mr. A. N. Tein.

Exam. Dishman: And he has been sworn?

Mr. Torinus: You have been sworn, have you, Mr. Tein?

The Witness: Yes, sir.

A. N. TEIN was sworn and testified as follows:

Direct examination.

Exam. Dishman: Mr. Torinus, exhibits have been distributed, and do you desire to number them now? The first one will be 110.

Mr. Torinus: I would like to have identified as Exhibit No. 110 the map exhibit covered in yellow.

I would like to have identified as Exhibit No. 111 the second map exhibit which has the legend in the lower right-hand corner "Great Northern Railway Lines, Year 1893".

I would like to havea identified as Exhibit No. 112 the large exhibit consisting of 29 pages that has in the lower right-hand corner in parenthesis the word G.N.-N.P. 1.

I would like to have identified as Exhibit No. 112 the large exhibit consisting of 26 pages that has in the lower right-hand corner (Designation G.N.-N.P. 2).

Exam. Dishman: The exhibits will be so identified.

(Defendant's Exhibits Nos. 110, 111, 112, and 113 were marked for identification.)

Mr. Torinus: I might say, Mr. Examiner, that Mr. Tein [fol. 3551] will have some other exhibits that are quite short that are not yet put in sets that will be distributed at noon.

By Mr. Torinus:

Q. State your name, residence, and place of business.

A. My name is A. N. Tein. My residence is St. Paul, Minnesota. My headquarters are in the general offices of the Great Northern Railway Company at St. Paul.

Q. What position do you hold with the Great Northern Railway Company?

A. I am Assistant General Freight Agent in charge of commerce work.

Q. State briefly your railroad experience.

A. I have been employed in the Freight Traffic Department of the Great Northern Railway Company for thirty-five years, during which time I have held various positions having to do with the application of tariffs and the determination of rates. I have testified in numerous proceedings

before the Interstate Commerce Commission involving freight rates and charges and in a number of proceedings before state regulatory bodies. My primary duties at the present time are the preparation and presentation of testimony respecting freight rates and charges in such proceedings.

Q. Are you familiar, Mr. Tein, with the rates and routes in which various railroads serving the Pacific Northwest, including the Great Northern, participate in the handling of trans-continental freight traffic to and from that territory?

[fol. 3552] A. Yes.

Q. Can you tell us generally how these rates and routes apply in connection with the Great Northern?

A. In order to understand how the trans-continental rates apply in connection with the Great Northern, it is necessary to picture the general location of our railroad system, which extends from the Twin Cities, Minnesota, and the Twin Ports of Duluth, Minnesota, and Superior, Wisconsin, on the east to the Pacific Coast terminals of Seattle and Tacoma, Washington, Portland, Oregon, and Vancouver, British Columbia, on the west. Between these eastern and western termini the Great Northern serves many stations which are common points served also by other railroads and where there are track connections for the interchange of carload freight between the Great Northern and such other railroads. Notwithstanding these numerous interchange points the Great Northern has not joined in joint rates on all class and commodity traffic over through routes with all the other railroads serving any of these interchange points from or to all Great Northern stations in the States of Idaho, Washington, Oregon and California, and the Province of British Columbia, Canada, hereinafter called the Pacific Northwest. Instead the general policy of the Great Northern has been to retain its long haul on both the eastbound traffic and the westbound traffic which it originates or terminates at its stations in the Pacific Northwest to the fullest extent possible wherever such retention is consistent with the Great [fol. 3553] Northern participating in the available traffic.

Q. Will you explain, please, the practices as to trans-continental routing followed by the other northern trans-

continental lines serving the Pacific Northwest, indicating whether or not these practices are similar to or differ from the policy of the Great Northern?

A. This policy of restrictive routing followed by the Great Northern is likewise followed by each of the major trans-continental lines serving the Pacific Northwest. Specifically, each of these lines by tariff provision restricts the application of the joint rates on trans-continental traffic so as to generally apply only via certain eastern interchange points which afford the particular trans-continental line serving the point of origin or destination in the Pacific Northwest its full maximum haul west of such specified points of interchange.

To illustrate this point, I have prepared Exhibit 110, which is a map of the Great Northern system on which there has been blocked out interchange points west of the Montana-Dakota state line between the Great Northern and other railroads participating in routes on transcontinental traffic. As will be seen from this exhibit, the Great Northern has connections with the Northern Pacific at Portland, Oregon, Chehalis, Tacoma, Seattle, Interbay, Everett, Sedro-Woolley, Adrian, Bellingham, Centralia, Lowell, Vancouver and Spokane, Washington, Sand Point, [fol. 3554] Atlas, Coeur d'Alene, Moscow and Palouse, Idaho, Helena, Butte, Billings, Hesper, Laurel and Sidney, Montana. The universal practice, with but one minor exception later referred to, has been for the Great Northern to retain the long hauls on the traffic it originates or terminates in the Pacific Northwest and not to participate with the Northern Pacific in joint rates on classes and commodities via any of these junctions. See Gateway 4 and Note 230, Agent Prueter's I.C.C. No. 1563, which confines routing to and from Great Northern points in the Pacific Northwest to movements via junctions east of Snowden, Montana. The Northern Pacific follows a similar practice and likewise does not generally participate with the Great Northern in competitive joint rates via said junctions on traffic it originates or terminates in the Pacific Northwest. See Gateway 6 of Agent Prueter's I.C.C. No. 1563, T.C.F.B. Tariff 5, also Circle Reference 25 of the

same publication which restricts movement to the Northern Pacific on traffic between Northern Pacific stations.

The Great Northern connects with the Chicago, Milwaukee, St. Paul and Pacific Railroad at the western interchange points of Everett, Seattle, Tacoma, Chehalis, Bellingham, Monroe, Newport, Rosalia and Spokane, Washington, Coeur d'Alene, Idaho, and at Butte, Great Falls, Hanover, Lewistown and Judith Gap, Montana, all of which are shown on Exhibit 110. There the universal practice, with but two exceptions later referred to, has been for the Great Northern to retain its long hauls on the traffic [fol. 3555] it originates or terminates in the Pacific Northwest and not to participate in joint rates on classes and commodities with the Milwaukee Road via any of said junctions, and the Milwaukee Road follows a similar practice of retaining its long hauls and does not generally join with the Great Northern in joint rates via said junctions on traffic originated or terminated by the Milwaukee Road in the Pacific Northwest. See Gateways 3 and 3-A in Agent Prueter's I.C.C. No. 1563, T.C.F.B. Tariff 5, which confines movement to the Milwaukee Road through Mobridge, South Dakota.

A review of the Milwaukee Road's routing provisions in Agent W. J. Prueter's I.C.C. 1563, T.C.F.B. Tariff 5, shows that that line follows the same practice with other trans-continental railroads as it does with the Great Northern. The Milwaukee Road does not join other trans-continental railroads in joint rates between eastern trans-continental groups and its stations in the Pacific Northwest over through routes with interchange between the Milwaukee Road and other lines at junctions west of Mobridge, South Dakota, except it does have joint rates via its Butte-Silver Bow, Montana, route in connection with the Union Pacific on a relatively few commodities westbound and only from origins in Colorado, Group J. Eastbound, this route applies only on fruits and vegetables and only to stations west of the eastern boundary line of the States of South Dakota, Nebraska, Kansas, Oklahoma and Texas, and to stations on the T. and N.O. in Louisiana. [fol. 3556] Other than this very limited application the joint rates of the Milwaukee Road on class and general

commodity traffic to or from its stations in the Pacific Northwest are confined to through routes with interchange with the Milwaukee Road at junctions east of Mobridge, whereby the Milwaukee Road secures the entire haul beyond Mobridge to or from its stations in the Pacific Northwest.

The Spokane International-Canadian Pacific-Soo Line route is treated the same as the routes of the Northern Pacific and Milwaukee Railroad. Again, to or from local points on the Soo Line in Minnesota, North Dakota and South Dakota the Great Northern retains its long haul and, additionally, it limits rates to or from common points to Great Northern direct movements. With respect to the joint trans-continental rates of the Canadian Pacific Railway to or from its stations in the Pacific Northwest that line by routing provisions generally restricts the application of such joint rates to apply only when the traffic is interchanged with the Canadian Pacific at Fort William, Ontario, or interchanges east thereof or the traffic may be routed in connection with the Soo Line to Portal, North Dakota-North Portal, Saskatche, thence Canadian Pacific. (See Gateways 14 and 14-S of Agent W. J. Preuter's I. C. C. 1563, T. C. F. B. Tariff 5). The same relative situation exists with respect to the Canadian National or Canadian National-D. W. and P. route. See Gateways 4 and Note 230, also Gateways 12 and 12-P, Agent Prueter's [fol. 3557] I. C. C. No. 1563.

In treating with the three routes just covered there are, as I have indicated, two exceptions. The first exception is with respect to eastbound fruits and vegetables, also lumber, from stations south and east of Spokane, Washington, on the branch lines extending to Coeur d'Alene, Idaho, Colfax, Washington, and Moscow, Idaho. On both commodities routes are available via Spokane, but on fruits and vegetables are confined to points on the Milwaukee Road, Northern Pacific and Soo Line, west of the Twin Cities or Missouri River and do not embrace the extensive territory in the east, southeast, and southwest where the great bulk of these commodities are marketed. The other exception is on eastbound lumber from stations on the Great Northern's main line Sand Point, Idaho, and west

to and including Portland, Oregon, and Vancouver, British Columbia, and branch lines north of the main line. The lumber routes from these points are similarly confined being restricted generally to local stations on the Milwaukee Road. The first of these situations, that is the rates from stations on the branch lines extending to Coeur d'Alene, Colfax and Moscow, came about through the acquisition by the Great Northern of other lines of railroad, in connection with which the Spokane routes were already established at the time of acquisition. Origins on the branch lines east and south of Spokane were on the former Spokane and Eastern Railway and Power Company and the Inland Empire Railroad Company, acquired by the [fol. 3558] Great Northern in 1927. (124 I.C.C. 355). The second situation with respect to lumber rates from stations on the Great Northern's main line, Sand Point, Idaho, and west and branch lines north thereof to Milwaukee Road local stations will be discussed later on. It is important to point out that the routing via Spokane to and from the properties acquired from the Spokane and Eastern Railway and Power Company and the Inland Empire Railroad Company was general at the time of acquisition but that cancellation of routes on all traffic, except to the extent indicated, was proposed and was found justified in I. and S. Docket 2999, reported at 142 I.C.C. 230.

At this time, I should like to point out that the Great Northern connects at Portland, Chemult, and Klamath Falls, Oregon, with the Southern Pacific Company, and with the Union Pacific at Portland and Bend, Oregon, Seattle, Tacoma, Oakesdale, Centralia, and Vancouver, Washington, Moscow, Idaho, and Butte, Montana, but that joint rates on classes and commodities moving trans-continentally are generally not applicable via these junctions, the Great Northern retaining its long haul.

Q. Aside from the situations mentioned, are the transcontinental rates of the Great Northern to and from the Pacific Northwest limited to routes through its eastern gateways?

A. Not in all cases. Some of such rates apply over other routes as well.

Q. Will you explain this additional routing, giving the [fol. 3559] background of the adjustments?

A. In 1931, in consummation of a plan through which the Great Northern sought to establish joint rates over a route between California and the Northwest not controlled by the Southern Pacific, a 200-mile line of railroad between the Great Northern's terminus at Klamath Falls, Oregon, and the Western Pacific at Keddie, California, was completed, the Great Northern extending south to Bieber, California, and the Western Pacific north to that point. The Bieber route was opened to traffic November 2, 1931. Through it the Great Northern has obtained competitive joint rates over a route on trans-continental traffic to and from California which affords it its long haul as far east as the Twin Cities on traffic to or from the Twin Cities and the territory east of the Twin Cities. Conversely, it was necessary at that time for the Great Northern to afford the Western Pacific some trans-continental routes to and from Great Northern Pacific Coast Territory, but these latter routes at competitive joint rates are confined to Oregon and Western Washington. The scope of the territory affording the Western Pacific its long hauls to or from Great Northern stations in the Pacific Northwest is illustrated by Circle Reference (77) of Supplement No. 7 to Agent Prueter's I.C.C. No. 1563. The right of the Great Northern to retain its long hauls on the bulk of this traffic from Central and Eastern Washington and Idaho was upheld by the Commission in I. and S. Docket 4126, Trans-[fol. 3560] Continental Traffic Routed via Bieber, California, reported at 213 I.C.C. 487.

The Great Northern's extension to the Pacific Coast was completed in 1893. At that time our western terminus was Seattle, Washington, and we were confronted with the serious problem of attempting to obtain some share in the traffic to and from Portland, then the largest city in the Pacific Northwest and an important North Pacific Coast port for the handling of traffic to and from foreign countries and to and from California. Portland was reputed to be the wealthiest city in the United States in proportion to its population and at the turn of the century was the seat of twenty national and other banks as compared with

only six national and other banks at Seattle. (P. F. Collier's University Encyclopedia, published in 1902). Portland was not reached by the Great Northern, as Exhibit No. 111, a map of our system at that time, indicates, but was served by the Oregon Railway and Navigation Company, which had a junction with the Great Northern at Spokane, Washington. In order that the Great Northern might obtain a share in the Portland traffic, the Great Northern and Oregon Railway and Navigation Company established joint rates to and from points on the Oregon Railway and Navigation Company, including Portland, August 1, 1894. At about that time the Great Northern also established joint rates to and from points on its line in the Pacific Northwest via Spokane and the Oregon Railway and Navigation Company, which did not then reach Seattle. These joint rates have been carried forward through the [fol. 3561] years, although in the intervening period the Oregon Railway and Navigation Company has become a part of the Union Pacific System and now reaches Seattle, and although since that time the S. P. and S. was built and the Great Northern acquired trackage rights into Portland over the rails of the Northern Pacific, extending south from Tacoma.

Even now, however, the Union Pacific does not have a full line of competitive joint rates to and from Great Northern points on trans-continental traffic via Spokane. In fact, that gateway is not now open at joint through rates on wool, livestock, ores, concentrates or smelter products (contained in Agent Prueter's I.C.C. Nos. 1539, 1534 and 1565). Eastbound fruits and vegetable rates via Spokane are generally limited to destinations reached by the Union Pacific and cannot move via the Union Pacific to markets off that line in the East, Southeast and Southwest. Tariffs filed to become effective September 15, 1932, closing the Spokane Gateway to this traffic, to the extent just indicated, were protested by various shipping interests but were permitted to become effective. Eastbound lumber rates via the Union Pacific are confined to a limited destination area on west and south of the Missouri River from Council Bluffs, Iowa, to St. Louis, Missouri, thence west of the Mississippi River from St. Louis, Missouri, to New

Orleans, Louisiana. The Great Northern territory from and to which these Spokane routes with the Union Pacific apply is confined to the main line for the most part. (See [fol. 3562] Gateway 4-B and Circle Reference (92) of Agent Prueter's I.C.C. No. 1563, also routes in Agent Prueter's I.C.C. No. 1539, also routes in Agent Preuter's I.C.C. Nos. 1534 and 1565).

I would like also to mention the joint rates on transcontinental traffic which the Great Northern has maintained for a number of years in connection with the Chicago, Burlington and Quincy Railroad Company via Laurel, Montana. These rates were established generally after the Great Northern and Northern Pacific each secured approximately 48-½ per cent of the stock of the Chicago, Burlington and Quincy Railroad, or a total of 97 per cent of such stock, and after the Great Northern had extended its line to Laurel, Montana, in 1908. Establishment of joint rates with the Burlington via the Laurel route has accomplished the dual purpose of permitting the Burlington to participate in traffic to and from stations on the Great Northern in the Pacific Northwest and of enabling the Great Northern to reach, via the direct route of the Burlington, the southwestern territory which is largely competitive with the Union Pacific and which can only be reached otherwise by the Great Northern, either over its longer route through the Twin Cities, Minnesota, or Sioux City, Iowa, or through the route of the Great Northern in connection with the Union Pacific via Spokane, Washington, which latter route, of course, affords it a much shorter haul. As an example, between Everett, Washington, on the Great Northern and Denver, Colorado, on the Union Pacific, the route is via Spokane, Washington. The [fol. 3563] distance from Everett to Spokane over the Great Northern is 297 miles. Between Everett, Washington and Denver, Colorado, in connection with the Chicago, Burlington and Quincy Railroad, the route is via Laurel, Montana. The distance from Everett to Laurel over the Great Northern is 1047 miles. Thus it may be seen that via the Laurel route the Great Northern obtained a longer haul by 750 miles than it would have obtained via the Spokane route. And this was done without any material

increase in the total distance between Everett and Denver, the distance via the Spokane route being 1658 miles and via the Laurel route 1698 miles, or a difference of only 40 miles. It should be pointed out that the Laurel route is not available at competitive joint rates from Great Northern stations in the Pacific Northwest on some of the more important commodities. On eastbound wool the route is not available to any eastern destinations. (Agent Prueter's I.C.C. 1539) On livestock the route is limited to the territory west of the west bank of the Missouri River Sioux City, Iowa, to Kansas City, Missouri, and west of the eastern boundary line of the States of Kansas, Oklahoma and Texas. (Agent Prueter's I.C.C. 1534). On ore, concentrates, and smelter products, the route is confined generally to territory west of the Mississippi River with a limited number of rates applying over the route into Southern Territory. (Agent Prueter's I.C.C. 1565). On apples and other fruits, the route does not apply to stations east of the Mississippi River (except for a small part [fol. 3564] of western Illinois and southern Indiana) and north of the Ohio River to Kenova, West Virginia, thence roughly on and north of the Norfolk and Western Railway to Roanoke, Virginia and on and north of the Virginian Railway to Norfolk, Virginia. (Agent Prueter's I.C.C. 1558). On lumber the route is restricted in a manner similar to apples (Agent Prueter's I.C.C. 1545 and 1568). Thus it may be seen that the Burlington cannot generally participate via the Laurel route at competitive joint rates in wool, livestock, smelter products, fruit and lumber traffic destined to the territory east of the Mississippi and north of the Ohio Rivers, which territory includes Chicago, Illinois, New York, New York, and the other large consuming centers and important markets of the east.

Q. Will you explain now, Mr. Tein, the general application of the trans-continental rates and routes in which the Great Northern participates on traffic moving to and from the Pacific Northwest in connection with the S. P. and S., the Oregon Electric, and Oregon Trunk?

A. On traffic from or to points in the Pacific Northwest on the S. P. and S., Oregon Electric and Oregon Trunk participated in by the Great Northern Railway, the rates

apply to the same extent as to and from stations on the Great Northern Railway via the Twin Cities and Laurel routes and to or from stations on the Oregon Electric to the same extent as stations on the Great Northern's coast line apply via the Bieber route. See Route Nos. 71-D, [fol. 3565] 71-E, 71-F, 71-DD, 71-W, 73-D, 73-E, 99-B, 99-C, 99-D, 99-E, 99-F, and 99-DD of Agent W. J. Prueter's I.C.C. 1563, T.C.F.B. Tariff 5.

Q. Does the Great Northern join with other carriers in joint rates and routes on traffic to and from the Pacific Northwest when such traffic moves through interchange points at its eastern termini?

A. Yes; and such joint rates generally apply uniformly via all connecting lines of the Great Northern serving the interchange point. Representative of these interchange points are the Twin Cities, Minnesota, Duluth, Minnesota, and Superior, Wisconsin, and Sioux City, Iowa.

On Exhibit 110 these representative interchange points have been blocked out and a heavy line has been drawn extending from Duluth, Minnesota, on the north to El Paso, Texas, on the south. There are as a general rule joint rates in effect between the territory east of this heavy line and all stations on the Great Northern Railway in the Pacific Northwest applicable via routes through the Twin Cities, thence Great Northern west of the Twin Cities. The joint rates applicable via the Duluth-Superior or Sioux City, Iowa, interchanges are limited in application and apply only from or to certain portions of the territory east of the heavy line, but to the extent the rates are applicable via these interchanges, such rates are generally applicable with all connecting lines serving these interchanges. The Twin Cities, Minnesota, is the principal [fol. 3566] interchange of the Great Northern with other railroads on trans-continental traffic to or from its stations in the Pacific Northwest.

Q. What is the background of the Twin Cities interchange?

A. The Twin Cities, Minnesota, interchange stems from the historical development of railroads in the entire territory west of Chicago, Illinois, to the Pacific Northwest prior to the time the first northern trans-continental rail

route was completed to the Pacific Northwest. A predecessor company of the Great Northern was operating a railroad west from St. Paul, Minnesota, before there was a railroad from Chicago, Illinois, to St. Paul, Minnesota. At that time, traffic to and from the east moved via the Mississippi River, St. Paul being located just south and east of the head of river navigation at St. Anthony Falls (now Minneapolis), Minnesota. When the rail lines from Chicago, Illinois, reached St. Paul, Minnesota, that point became the first interchange point between the railroads operating east of St. Paul, Minnesota, and the Great Northern. In other words, it was natural for the Milwaukee Road when it completed its line between its eastern terminus and St. Paul, Minnesota, to interchange traffic at that point with the predecessor company of the Great Northern, which was already established at St. Paul and had a line extending west from that point. This interchange was later extended to include Minnesota Transfer and Minneapolis, Minnesota. The established interchange at the [fol. 3567] Twin Cities, Minnesota, was continued as the Great Northern built west and therefore it may be seen that the geographical location of the Twin Cities at the head of river navigation on the Mississippi and the normal growth of the railroads in the territory west of Chicago, Illinois, accounted for the establishment of the Twin Cities interchange which has since resulted in the Great Northern being in a position of generally securing its maximum haul both eastbound and westbound on traffic between the territory east and south of St. Paul, Minnesota, and the territory served by the Great Northern.

Q. Mr. Tein, have you investigated the history of the Great Northern's participation in joint rates with the S. P. and S. and its subsidiaries?

A. Yes.

Q. Will you explain that history, please, and what it shows?

Mr. Maguire: Could I interrupt a minute. At that close of this first paragraph of the answer, Mr. Examiner please, I would like to ask a question, if Mr. Tein will pause.

A. Over the years since the S. P. and S. and Oregon Trunk were built, and since the acquisition of the Oregon Electric, the Great Northern has as a general rule treated these lines as a part of its railroad in the matter of through routes and joint rates on trans-continental traffic and the Great Northern has not generally permitted the S. P. and S., Oregon Electric, or Oregon Trunk to join in new through routes and joint rates in which the Great Northern [fol. 3568] was not willing to join.

Mr. Maguire: The questions for clarification are this: When you say the Great Northern as a general rule has treated these lines as a part of its railroad in the matter of through routes, you mean that so far as the admission of these lines to through routes and through rates they have been accorded the same treatment as portions of the Great Northern Railway itself, is that what you mean to say?

The Witness: That is what I mean, and I will go into some detail in explaining that later on when I cite the routes that are in effect.

Mr. Maguire: Yes. I just wanted to get the general interpretation of your language where you state the Great Northern has not generally permitted the S. P. and S. that is subject to the qualifications as set forth in the testimony of numerous witnesses, including Mr. Finley of the Great Northern and Mr. Smith of the Northern Pacific, Mr. R. F. Smith, where they stated that any action had to be joint so far as the two St. Paul lines and the S. P. and S. are concerned, that is subject to that qualification.

The Witness: That is correct.

Mr. Maguire: Thank you.

A. The Great Northern does not join the Milwaukee Road generally in through routes and joint rates on trans-continental traffic via routes through so-called short-haul [fol. 3569] interchange points of the Great Northern and the Great Northern has consistently refused to permit the S. P. and S., Oregon Electric or Oregon Trunk to join the Milwaukee Road or any other railroad for that matter, other then the Northern Pacific, in through routes and joint rates via interchange points which either short-haul

the Great Northern or afford no haul to the Great Northern.

Mr. Maguire: Could I interrupt again, Mr. Examiner. You are saying qualification not giving consent in this paragraph as applied to the preceding paragraph?

The Witness: That is right.

Mr. Maguire: Thank you.

A. A review of the rail service available in the Columbia River area prior to the construction of the S. P. and S. shows that Astoria, Oregon, was reached by rail over the Astoria and Columbia River Railroad consisting of a line extending from Goble, Oregon, to Astoria, Oregon, constructed in 1895-1898 (41 Val. Rep. 39). Portland, Oregon was served by the Northern Pacific over its route from the north by way of Auburn and Kalama, Washington, and Goble, Oregon, also by the O. R. and N. over its route along the south bank of the Columbia River from the east and by the Southern Pacific Company over its route from the south. Vancouver, Washington was served by the Washington and Oregon Railway, which had a line between Kalama, Washington, and Vancouver, Washington, constructed in 1901-1903 (25 Val. Rep. 503). This latter line was absorbed by the Northern Pacific effective January 18, [fol. 3570] 1904, (Agent R. H. Countiss' I.C.C. No. 376, T.C.F.B. Westbound Tariff No. 4-C, Supplement No. 1). The joint rates applying to Portland, Oregon, in connection with the Great Northern were then limited to routing Great Northern-Spokane, Washington, thence O. R. and N. to Portland. The Great Northern did not participate in joint rates to Vancouver or Pasco, Washington, over an all-rail route and therefore, under the existing joint rates then in effect the Great Northern was not in a position to participate in traffic to either Vancouver or Pasco, Washington by rail. In order to permit the Great Northern to participate in traffic to these points for construction of the new line between Vancouver and Pasco, Washington, on October 12, 1905, a special tariff was issued providing "effective at once, rates shown in N.P. Ry. No. 14300, G. N. Ry. G.F.O. No. 11800, as applying to Vancouver, Washington, or Portland, Oregon, will also apply

via Great Northern Ry., Seattle, Washington, and Northern Pacific Ry., and rates shown in N.P. Ry. No. 15500, G. N. Ry. G.F.O. No. 13200, as applying to Kannewick, Pasco or Ainsworth, Washington, will also apply via Great Northern Railway, Spokane, Washington, and Northern Pacific Railway." This tariff also carried the following instructions to Agents: "Application of rates as shown in this amendment are intended to apply only on material and supplies used in construction of the Portland and Seattle Railway, and consigned to Siems and Shields, contractors". (See N. P. Ry. I.C.C. No. A-2704 (BTR-67) [fol. 3571] amending N.P. Ry. I.C.C. No. A-2350, (N.P. Ry. No. 15500) and T.C.F.B. I.C.C. No. 376 (T.C.F.B. Tariff No. 4-C) bearing G.N. Ry. G.F.O. No. 16434 amending G. N. Ry. G.F.O. Nos. 11800 and 13200).

From this tariff it may be seen that even though the Northern Pacific was in position to handle the traffic via its own line from its eastern terminals at the Twin Cities through to the destinations named, that line joined in joint rates which permitted the Great Northern to participate in the traffic and obtain its maximum haul to Seattle, Washington, on traffic to Vancouver, Washington, or Portland, Oregon, or its maximum haul to Spokane, Washington, on traffic to Pasco, Kennewick or Ainsworth, Washington.

Mr. Maguire: At this moment, I don't believe I mentioned this before.

The Witness: You didn't.

Mr. Maguire: I think you paused.

Exam. Dishman: Where is that?

Mr. Maguire: If the Examiner please, I object to the next sentence which immediately follows the place where the witness stopped as argumentative and as a conclusion of the witness. The basic facts, I think, have already been testified to.

Exam. Dishman: The action of the Northern Pacific in permitting the Great Northern?

Mr. Maguire: Yes, that sentence.

[fol. 3572] Exam. Dishman: You also object to statements on pages 17 and 18.

Mr. Maguire: I will do that when the witness comes to them. I thought it was better probably to handle them one at a time.

Mr. Torinus: Mr. Examiner, we have an experienced traffic officer on the stand who is familiar with the policy of the Northern Trans-continental Lines through the years and has testified as to those policies in some detail. I think that his considered conclusion concerning the action of the Northern Pacific in permitting this route adds something to the record besides argument. It is the statement of an experienced traffic officer. I think it is competent evidence. The commission doesn't have to accept it but I think it would like to be informed as to his opinion. I don't think it is argumentative. I would like to have the statement read.

Mr. Maguire: I submit, Mr. Examiner, that rather than it being the testimony of an experienced traffic officer it seems more to me as an argumentative statement to be made by an experienced lawyer in his brief and I think Mr. Torinus is amply qualified in all ways to comment on any such conclusion in his brief.

Exam. Dishman: Mr. Torinus, you don't contend that this statement is free of argument, do you?

Mr. Torinus: I don't think any witness in any case, even in a court case where the strictest rules of evidence [fol. 3573] are applied, can just simply state bare facts without conclusions of fact. I don't think this statement contains a legal argument. I intend to brief the case but I would like to add as a foundation for what arguments are made in brief not only Mr. Tein's statement of the bare facts but his considered judgment on what those facts mean to a traffic expert, and I think that this statement should go into the record.

Mr. Maguire: As a matter of fact, if I might be heard further, Mr. Examiner, this statement is not a conclusion that an experienced traffic witness would come to. It might be a conclusion if there were evidence to sustain it which a person versed in corporate management could come to, and the only thing is that—now counsel is perfectly at liberty to make an argument of the sort in his brief. It

is well within the scope of argument, but I do not think he should be placed in the position of saying I am merely repeating a fact which was testified to by witness Tein. It isn't a fact, it is merely a conclusion, and it is merely argumentative and properly belongs in the briefs, and Mr. Tein is not an expert who can determine whether or not an isolated concession in handling in the matter of rates and routes for handling construction materials indicates a joint interest of anybody in anything. The mere fact of that doesn't mean a thing because there have been other instances of where the western carriers have permitted themselves to be short-hauled.

Exam. Dishman: The decision of the commission, of [fol. 3574] course, will not turn on whether or not such a statement as this is in evidence.

I call your attention to Rule 77 of the commission's general rules of practice which provides in part that prepared statements may be read into evidence, but it says that, goes on to say "provided the statement shall not include argument", so based on that my ruling is that this be stricken in pursuance of rule 77 of the joint rules of practice of the commission.

By Mr. Torinus:

Q. You may proceed, Mr. Tein.

A. The initial publication of joint rates to stations on the newly constructed line of the S. P. and S. between Vancouver, Washington, and Pasco, Washington, was made effective March 23, 1908, (Agent R. H. Countiss' I.C.C. No. 376, T.C.F.B. Tariff No. 4-C) with routing to these stations via Northern Pacific, or Great Northern, thence S. P. and S., with the Northern Pacific handling the traffic from Spokane, Washington, to Pasco, Washington, in connection with the Great Northern route. Similar routing was provided to Portland, Oregon, and to stations on the Astoria and Columbia River Railroad.

The initial publication of rates on lumber from the newly constructed line of the S. P. and S. between Vancouver, Washington, and Pasco, Washington, to eastern trans-continental destinations was made effective April

28, 1908. This publication included, incidentally, rates to stations on the Milwaukee Road with routing S. P. and S.-Pasco-Northern Pacific-Spokane-Great Northern, thence [fol. 3575] via eastern junctions of the Great Northern with Milwaukee Road in North Dakota, South Dakota, Minnesota and Iowa, and such rates applied to all stations on the Milwaukee Road between Glenham, South Dakota, and Chicago, Illinois. (See Agent R. H. Countiss' I.C.C. No. 850, T.C.F.B. Tariff No. S.R. 963, Supplement No. 6.)

Effective September 5, 1908, the tariff routing was changed to reflect the opening of the bridge over the Columbia and Willamette Rivers between Vancouver, Washington, and Portland, Oregon; and Portland, Oregon was added to the tariffs as a station on the S. P. and S.

It should be noted that during this time when the S. P. and S. extended only as far east as Pasco, Washington, the Northern Pacific joined in a route giving the Great Northern its longest possible haul on traffic to stations on the S. P. and S. and the Astoria and Columbia River Railroad.

Mr. Torinus: In view of the ruling on the statement as to the sentence on page 16 I think you might as well skip over the remainder of that paragraph and start with the next one.

A. Following completion of the S. P. and S. line from Pasco to Spokane, Washington the tariffs were again changed effective April 15, 1909, providing for routing to stations on the S. P. & S. via Northern Pacific to Spokane, or Pasco, Washington, S. P. and S., or via Great Northern, Spokane, Washington, S. P. and S. Corresponding changes were made in the routes to Astoria, Oregon. [fol. 3576] (See Agent R. H. Countiss' I.C.C. No. 866, T.C.F.B. Tariff No. 4-D, Supplement No. 4.) From this it may be seen that at the time the S. P. and S. was built the routing to or from stations on this line was confined to routes in connection with the Northern Pacific or Great Northern—

Mr. Maguire (interrupting): Do you wish to make another magnanimous gesture?

Mr. Torinus: It is entirely factual and not argumentative and I'd like to have that in the record.

Exam. Dishman: The ruling is that it is in the same nature of the other evidence objected to, so it will be the same ruling.

By Mr. Torinus:

Q. You may proceed, Mr. Tein.

Mr. Maguire: May I ask a question off the record.

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

Proceed.

A. The Great Northern reached Portland, Oregon, and Vancouver, Washington, in 1910 under a contract with the Northern Pacific, whereby the Great Northern secured rights to serve the stations south of Tacoma, Washington, to Portland, Oregon. The tariffs were changed effective January 1, 1910, providing routing to Portland and Vancouver via the Great Northern. (See R. H. Countiss' I.C.C. No. 907, T.C.F.B. Tariff No. 4-F, Supplement No. 3.) The previously established route to Portland and Vancouver [fol. 3577] via Great Northern, Spokane, Washington, S. P. and S., was continued in effect. At the same time, additional routing was established to the stations Centralia to Felida, Washington, inclusive, via Great Northern, Spokane, Washington, S. P. and S., Vancouver, Washington, Great Northern, which made available to the Great Northern routing comparable to that previously established via the S. P. and S. and Northern Pacific at the time the S. P. and S. line between Vancouver and Pasco was opened.

Q. Mr. Tein, I would like to interrupt for a minute. Could you point out on the map where those stations Felida and Vancouver are located—I mean Felida and Centralia.

A. Felida is the first station north of Vancouver, Washington, and Centralia is in the first block north of Vancouver, Washington.

Q. On the Great Northern's line between—

A. (Interrupting) Vancouver, Washington, and Vancouver, British Columbia.

Q. All right, you may proceed.

A. Generally speaking this routing has been continued through the years.

Q. Have you investigated the background of the present trans-continental rates on lumber from Great Northern and S. P. and S. stations to stations on the Milwaukee Railroad?

A. Yes.

Q. Will you explain that background?

[fol. 3578] A. Shortly after completion of the S. P. and S. into Spokane, Washington, the Milwaukee Road established routing to Portland and Astoria, Oregon, via Plummer, Idaho, in connection with the O. R. and N. to Portland. The route to Astoria was by boat lines beyond Portland, (see Agent R. H. Countiss' I.C.C. No. 890, T.C.F.B. Tariff No. 4-F, Supplement No. 1, effective July 3, 1909).

Agent R. H. Countiss' I.C.C. No. 942, T.C.F.B. Tariff No. 4-I, effective May 11, 1912, cancelling among other tariffs Chicago, Milwaukee and Puget Sound Railway I.C.C. No. 115, Tariff No. 120-B, showed that routing had been established to Seattle, Tacoma, Everett, Aberdeen, Hoquiam, Washington, and other stations via Chicago, Milwaukee and St. Paul Railway, Mobridge, South Dakota, and Chicago, Milwaukee and Puget Sound Railway to destination. The Chicago, Milwaukee and Puget Sound Railway also had established routing to stations on the Columbia and Puget Sound Railroad via Maple Valley, Washington, and to stations on the Columbia and Puget Sound Railroad via Maple Valley, Washington, and to stations on the Tacoma Eastern Railroad via Tacoma, Washington; also to stations on the Bellingham Bay and British Columbia Railway via Seattle, Washington, thence by water to Bellingham, Washington; also to several other destinations served by boat lines via Seattle or Tacoma, Washington.

The present trans-continental routes on lumber and related articles from stations on the Great Northern and [fol. 3579] S. P. and S. System lines in the Pacific Northwest to stations on the Milwaukee Road, east of the Missouri River, stem from the construction of that line to the Pacific Northwest. Prior to that time the rates applied via routes through eastern interchange points of the Great Northern with the Milwaukee Road in the States of Minnesota, Iowa, South Dakota and North Dakota. (See Agent R. H. Countiss' I.C.C. Nos. 913 and 951, T.C.F.B. Tariff Nos. S.R. 1000 and S.R. 1012, respectively.)

Effective December 31, 1912, routing in connection with these rates to all destinations on the Milwaukee Road in Minnesota, Iowa, Missouri, Wisconsin, Michigan and Illinois, was changed by eliminating the routes via the Eastern interchange points named above and adding new routes via Great Northern to Everett, Seattle, or Spokane, Washington, thence Milwaukee Road to destination on its line. (See Agent R. H. Countiss' I.C.C. No. 959, T.C.F.B. Tariff No. S.R. 1019.) At that time the Milwaukee Road had not as yet reached Spokane, and pending the entrance of that line into Spokane, routing was provided Great Northern, Spokane, Washington, O.R. and N., Plummer, Idaho, thence Milwaukee Road to destination.

A corresponding change in routing was made to Milwaukee Road stations east of the Missouri River in the states of North Dakota, South Dakota and Nebraska, effective April 30, 1913. (See Agent R. H. Countiss' I.C.C. No. 969, T.C.F.B. Tariff No. 18-A.) This routing via Great Northern short-haul junctions was later confined [fol. 3580] generally to Milwaukee Road local stations in the territory covered by Agent R. H. Countiss' I.C.C. No. 959. (See Supplement No. 19, effective August 28, 1913.)

Mr. Maguire: Could I interrupt you, Mr. Tein? The language which appears in the next paragraph, to come, which is a quotation from the Seattle Shingle Company case is not, it appears to me, particularly material, but I do not object to it so long as it is understood that the mere quotation of this language is not to be deemed evidence of any facts which may be stated there in that language.

Exam. Dishman: Well, the decision, of course, will speak for itself, the decision from which you are quoting.

Mr. Maguire: All this quotation says, it is claimed, by whom I don't know, that Milwaukee insisted upon certain things, but the commission does not so find that the Milwaukee—so as long as that understanding is there, why, I have no objection to it being read in.

Mr. Torinus: I don't have that understanding. I think that I would like to—

Exam. Dishman (interrupting): Well, the decision will speak for itself.

Mr. Torinus: That is my understanding.

Exam. Dishman: From which this quotation is taken.

Mr. Torinus: Certainly.

Mr. Maguire: And the quotation will speak for itself.

[fol. 3581] Mr. Torinus: Certainly.

Exam. Dishman: All right, proceed.

A. The following is taken from *Seattle Shingle Co.* v. *Chicago, Milwaukee, St. Paul and Pacific Railway Company*, decided May 5, 1914, 30 I.C.C. 364, 366, "Formerly the traffic was exchanged at the eastern junctions of the Milwaukee with the other two roads, but it is claimed that the Milwaukee when it built its line to the coast insisted on its right to the long haul on this traffic, which meant its transfer at the western instead of the eastern junctions". This routing arrangement remained in effect until April 14, 1922, when the Minnesota Transfer, Minnesota, route was reinstated to the same Milwaukee destination to which the route applied prior to December 31, 1912. (See Agent R. H. Countiss' I.C.C. No. 1095, T.C.F.B. Tariff 28-D, Supplement No. 5.) The reinstatement of the Minnesota Transfer route was at the request of the Milwaukee Road in letter, dated Chicago, Illinois, January 27, 1922, (without file reference) addressed jointly to Mr. Henry Blakely, F.T.M., Northern Pacific Railway, St. Paul, Minnesota, and Mr. H. H. Brown, A.F.T.M., Great Northern Railway, St. Paul, Minnesota, and signed by Mr. H. F. Pierpont, Traffic Manager, Chicago, Milwaukee and St. Paul Railway.

Q. Mr. Tein, in connection with your research into the history of trans-continental routing, did you find any instances of attempts by trans-continental lines to close certain routes or gateways?

[fol. 3582] A. Yes, and many of such attempts were successful.

Q. Explain what you found, please.

A. In the early days beginning with 1893, when the Great Northern reached the Pacific Northwest there were then in existence, or were later constructed, many separate small railroads in the territory north of Portland, Oregon, which have since become a part of a trans-continental line. As an example, there was the Seattle and International Railway extending from Seattle, Washington, north to Sumas, Washington, through Arlington and Wickersham, Washington, the Seattle and Northern Railway extending from Anacortes, Washington, east to Woolley, Washington, the Bellingham Bay and British Columbia Railroad extending from Bellingham, Washington, northeasterly through Sumas, Washington, to Glacier, Washington, the Columbia and Puget Sound Railroad extending east from Seattle, Washington, through Maple Valley, Washington, the Tacoma Eastern Railroad extending from Tacoma, Washington, south to McKenna, Morton and Ashford, Washington, the Washington and Oregon Railway extending south from Kalama, Washington, to Vancouver, Washington, and the Astoria and Columbia River Railroad extending from Astoria, Oregon, east to Goble, Oregon, all of which lines have since become a part of or are under the control of a trans-continental line.

A review of Agent R. H. Countiss' I.C.C. No. 1, Trans-Continental Freight Bureau Westbound Tariff No. 1-A, effective June 24, 1897, (BTR 14) which applied on Classes [fol. 3583] and General Commodities from New York and Common Points, Pittsburgh, Buffalo and Common Points, Cincinnati, Detroit and Common Points, Chicago and Common Points, Mississippi River Common Points and Missouri River Common Points to Pacific Coast Terminals and certain intermediate points for account

of the Great Northern, Northern Pacific, O. R. and N. and Southern Pacific Company shows that rates to stations on the Great Northern Railway applied only when routed via the Great Northern Railway. Similarly the rates to stations on the Northern Pacific Railway applied only when routed via that line. This tariff also provided that the joint rates shown in the tariff to stations on the Seattle and International Railway and Seattle and Northern Railway applied in connection with either the Great Northern or the Northern Pacific.

A review of subsequent issues of this tariff shows that the other small railroads named above did not initially join in the joint rates so that rates to stations on these small railroads were made on a combination basis. The combination rates generally consisted of the Pacific Coast Terminal rates of the trans-continental lines to the junctions between the trans-continental lines and the small railroads, plus the rates of the small railroads beyond to the respective destination on the small railroads. This permitted all trans-continental lines serving the junctions with the small railroads to participate in traffic to stations on these small railroads on a combination basis of rates [fol. 3584] which was higher than the Pacific Coast Terminal rates. This situation gradually changed during the following years either through the small railroads being absorbed by a trans-continental line, resulting in the rates being restricted to such trans-continental line, or through the small railroads joining in the joint Pacific Coast Terminal rates and confining the application of such joint rates to certain through routes, leaving the higher combination rates to apply over the other routes.

In 1897 the joint rates to stations on the Seattle and International Railway applied over through routes via either the Great Northern or Northern Pacific in connection with the Seattle and International Railway. Thereafter, the Northern Pacific absorbed the Seattle and International Railway and the through route Great Northern and Seattle and International Railway was cancelled, leaving the higher combination rates to apply via the route of the Great Northern on and after May 25, 1901.

(See Agent R. H. Countiss' I.C.C. No. 142, T.C.F.B. Tariff No. 1-D, Supplement No. 23 (BTR 15).)

The joint rates to stations on the Seattle and Northern Railway at first applied over through routes via either the Great Northern or the Northern Pacific, thence Seattle and Northern Railway. The through route via Northern Pacific, thence Seattle and Northern Railway was cancelled, effective May 31, 1901, leaving the higher combination rates to apply via the route of the Northern Pacific. [fol. 3585] (See Agent R. H. Countiss' I.C.C. No. 142, T.C.F.B. Tariff No. 1-D, Supplement No. 23) (BTR 15). The Seattle and Northern Railway was absorbed by the Great Northern, effective February 1, 1902. (See R. H. Countiss' I.C.C. No. 142, T.C.F.B. Tariff No. 1-D, Supplement No. 32.)

For many years, the Northern Pacific had through routes and joint rates via Spokane, Washington, on trans-continental traffic to and from stations on the Great Northern's line extending north from Dean, Washington. Stations on this line were on the former Spokane Falls and Northern Railway, which prior to 1898, was controlled by the Northern Pacific. On July 1, 1898, the Northern Pacific sold all of the stocks and bonds to the Great Northern, (133 I.C.C. 1, 311). These through routes dated back to the time the Northern Pacific controlled the Spokane Falls and Northern Railway. These through routes were cancelled effective July 26, 1938, leaving the joint rates to apply only in connection with the Great Northern Railway and higher combination rates in connection with the Northern Pacific. (See Agent L. E. Kipp's I.C.C. No. 1396, T.C.F.B. Territorial Directory No. 40-F, Supplement No. 30.) (S/F-3331.)

The same practice of limiting routing in connection with newly acquired lines has been followed in other instances previously mentioned. Prior to the time the Great Northern acquired the Spokane and Eastern Railway and Power Company and the Inland Empire Railroad Company, which lines extended east from Spokane, Wash- [fol. 3586] ington, to Coeur d'Alene, Idaho, and south from Spokane, Washington, to Colfax, Washington, and

Moscow, Idaho, the rates to or from stations on the Coeur d'Alene line applied generally via through routes of the Canadian Pacific Railway and Spokane International Railway or the Great Northern or the Northern Pacific. To or from stations on the Colfax and Moscow lines the rates applied generally via through routes the same as above and in addition applied via the Chicago, Milwaukee and St. Paul Railway. The interchange between the trans-continental lines and the Spokane and Eastern Railway and Power Company or the Inland Empire Railroad was generally at Spokane, Washington. Following the acquisition of these lines by the Great Northern the through routes previously in effect in connection with the Chicago, Milwaukee and St. Paul Railway or Canadian Pacific Railway and Spokane International Railway, or Northern Pacific, were cancelled except as to eastbound lumber and forest products and except as to eastbound rates on fresh fruits and vegetables and in connection with these latter commodities the routes were cancelled to the extent they applied to the Twin Cities, Minnesota, Sioux City, Iowa, or points east thereof. This cancellation of the previously existing through routes eastbound was suspended and was found justified in I. and S. Docket No. 2999, *Routing from Points on S., C.D. and P. Ry.*, 142 I.C.C. 299.

Another example of this trend was the cancellation of through routes via Bieber, California, between the [fol. 3587] territory east of the Missouri River from Sioux City, Iowa, to Kansas City, Missouri, thence approximately east of a line drawn from Kansas City, Missouri, to Port Arthur, Texas, on the one hand and stations on the Great Northern in Washington, east of Snohomish, Washington, and certain stations in Idaho on the other hand previously referred to. The Bieber, California, route was opened to trans-continental traffic on November 2, 1931. Beginning with that date the joint rates applied generally between the territories described above via the Bieber, California, route. Tariffs were filed, cancelling the route both eastbound and westbound with certain minor exceptions to become effective August

10, 1935. The cancellation was suspended in I. and S. Docket No. 4126, *Trans-Continental Traffic Routed Via Weber, California*, 213 I.C.C. 487, and later found justified.

For many years prior to November 4, 1912, the Oregon-Washington Railroad and Navigation Company, earlier named the Oregon Railroad and Navigation Company, joined in joint rates and through routes on trans-continental traffic to destinations on its line, also to destinations on the Southern Pacific Company in Oregon and stations on the S. P. and S. west of Portland, Oregon, which routes included the Denver and Rio Grande Railroad and the Colorado-Midland Railway. The following route is representative of these routes:

Union Pacific Railroad, or Chicago, Burlington and Quincy Railroad, Denver, Colorado, or Chicago, Rock [fol. 3588] Island and Pacific Railway, Denver, Colorado Springs or Pueblo, Colorado, in connection with Colorado-Midland Railway, and Denver and Rio Grande Railroad to Salt Lake City, Utah, Oregon Short Line Railroad, Huntington, Oregon, thence Oregon-Washington Railroad and Navigation Company or Oregon-Washington Railroad and Navigation Company and its connections named above.

Similarly for many years prior to December 31, 1912, the Oregon-Washington Railroad and Navigation Company joined in joint rates and through routes on trans-continental traffic originating in the territory east of the Missouri River to destinations on its line, also to destinations on its connections, which routes permitted the Atchison, Topeka and Santa Fe Railway, Chicago, Burlington and Quincy Railroad, Chicago, Rock Island and Pacific Railway or Missouri Pacific Railway to participate in the haul in the territory between the Missouri River on the east and Denver, Pueblo, or Pullman, Colorado, on the west. Effective December 31, 1912, in Supplement No. 15 to Agent R. H. Countiss' I.C.C. No. 942, T.C.F.B. Tariff No. 4-I (BTR 187) a restriction was added to the tariff which provided that rates authorized in tariff did not apply in connection with Atchison, Topeka and Santa Fe Railway, Chicago, Burlington and Quincy

Railroad, Chicago, Rock Island and Pacific Railway, or Missouri Pacific Railway, via Denver, Pueblo or Pullman, Colorado, from points on or east of west bank of Missouri River south to Kansas City, Kansas, inclusive, and [fol. 3589] points east of eastern boundary line of the states of Kansas, Oklahoma and Texas. This restriction, together with the cancellation of routes mentioned in the preceding paragraph, limited the application of the rates so as to apply only over the route of the Union Pacific Railroad from the Missouri River to Granger, Wyoming. The restriction was suspended in I. and S. Docket No. 202, but was later permitted to take effect on all traffic, except lumber and fruit traffic. *Lumber Rates, Oregon and Washington to Eastern Points,* 29 I.C.C. 609, 31 I.C.C. 191. This case also embraced the proposed closing of the Wallula Gateway to shipments of wool from local points on the lines of the Oregon-Washington Railroad and Navigation Company to the east over the Northern Pacific. The Commission found the proposed closing of the route on this traffic not to involve any unreasonable consequences and the order of suspension was vacated.

Prior to January 25, 1932, joint carload rates on sheep from points in northern Oregon on the Shaniko, Condon, Heppner and Pilot Rock branches of the Oregon-Washington Railroad and Navigation Company and from Reith, Oregon, and certain main line points west thereof, including intermediate points in Oregon and Washington to destination in Western Trunk Line and Official Territories applied over routes through Montana in connection with the originating line to Wallula, Washington, thence Northern Pacific or to Spokane, Washington, thence Great Northern. Subsequent action by the Oregon-Washington Railroad and Navigation Company cancelled [fol. 3590] the application of the joint rates over routes via Wallula, thence Northern Pacific and via Spokane, thence Great Northern, except that the joint rate continued to apply over these routes on shipments destined to St. Paul or Minneapolis, Minnesota, and directly intermediate points. (See I. and S. Docket No. 3823, *Routing Livestock from Oregon and Washington,* 194 I.C.C. 609,

and Agent H. G. Toll's I.C.C. No. 1281, T.C.F.B. Tariff No. 52-A, Supplement No. 39, Page 17, Exception 2.)

Prior to the time the Chicago, Milwaukee and Puget Sound Railway acquired the Tacoma Eastern Railroad in May, 1909, and established joint rates with that line the Tacoma Eastern Railroad had not generally joined in the joint rates on trans-continental traffic on Classes and General Commodities, except lumber and forest products, so that rates to stations on the Tacoma Eastern Railroad were made on a combination basis. This permitted the trans-continental lines serving Tacoma, Washington, to participate in traffic to stations on the Tacoma Eastern Railroad. The routing in connection with the joint rates established by the Chicago, Milwaukee and Puget Sound Railway to these stations limited the traffic to movement over the Chicago, Milwaukee and St. Paul Railway, Mobridge, South Dakota, Chicago, Milwaukee and Puget Sound Railway, thereby leaving the higher combination rates to apply via the other trans-continental lines serving Tacoma, Washington.

[fol. 3591] Q. Mr. Tein, excuse me for just a minute.

Mr. Torinus: Mr. Examiner, this paragraph which Mr. Tein has just read and the following discussion up to the top of page 34 relates to action taken by the Milwaukee Railroad, and it is pretty much a subject by itself and I would suggest that we might suspend here rather than at some other place in the middle of a discussion, and continue after lunch.

Exam. Dishman: All right.

Off the record.

(Discussion off the record.)

Exam. Dishman: On the record.

We will recess for lunch until 2:00 p.m.

(Whereupon, at 12:30 p.m., a recess was taken until 2:00 p.m. of the same day.)

[fol. 3592] AFTERNOON SESSION 2:00 p.m.

Exam. Dishman: The hearing will come to order, gentlemen.

A. N. TEIN resumed his testimony as follows:

Direct examination (continued).

By Mr. Torinus:

Q. Mr. Tein, I believe we were at the bottom of page 28. You may proceed.

A. For some years prior to the time the Chicago, Milwaukee and Puget Sound Railway acquired the Tacoma Eastern Railroad the latter line had joint rates on lumber and forest products from origins on its line to destinations on the Northern Pacific and its connections. In August, 1914, the Milwaukee Road filed tariffs cancelling the joint rates from points on the Tacoma Eastern to points east of the Missouri River applicable by way of the Northern Pacific and its connections, leaving available to such points only one through route, that over its own line, via which the rates were the same as had formerly obtained over the Northern Pacific route. Joint rates to local points on the Northern Pacific were not cancelled. A complaint was filed seeking the re-establishment of the previously existing route in connection with the Northern Pacific. Complainants in that case urged among other things that the cancellation of the Northern Pacific route had deprived complainants of the right to reconsign to points east of the Missouri River shipments originally consigned to local points on the North-
[fol. 3593] ern Pacific, except at increased and unreasonable rates. The Commission dismissed the complaint. *West Coast Lumber Manufacturers Association* v. *T.E. R.R. Co.*, 45 I.C.C. 227. In that decision it was said:

"The establishment of a second through route via a competing line would result in short hauling the Milwaukee about 1,800 miles on all shipments originating on the Tacoma Eastern and transported to destinations east of the Missouri River via the Northern Pacific route, and conse-

quently, would deprive it on such traffic of transportation revenues to which ordinarily it is entitled by reason of its location and by virtue of its ownership of the Tacoma Eastern, which originates the traffic.

The issue presented, therefore, is whether the Milwaukee, which through its subsidiary originates the traffic and transports it to Tacoma, can be compelled to deliver it at that point to the Northern Pacific, or whether it is justified in reserving as far as possible the haul to its own rails. That the law upholds the carrier in retaining tonnage on its line where the transportation can be performed with reasonable dispatch and without undue discrimination is well settled; see—*Suffern Grain Company* vs. *I.C. R.R. Co.*, 27 I.C.C., 192, 194; *Wheeler Lumber Bridge and Supply Company* v. *Atchison, Topeka, and Santa Fe Railway Company*, 30 I.C.C., 343, 344. It is also settled that our authority under Section 15 of the act to establish in the first instance, or to continue in force voluntarily established through routes and joint rates, is limited to the extent that [fol. 3594] we may not require a carrier, without its consent, to embrace in such through route unreasonably long as compared with another practicable through route which could otherwise be established.' *Marble Rates from Vermont Points*, 29 I.C.C., 607, 608; *The Ogden Gateway Case*, 35 I.C.C., 131."

Effective March 10, 1913, in Supplement No. 19 to Agent R. H. Countiss' I.C.C. No. 942, T.C.F.B. Tariff No. 4-I (BTR 187) the name of the Bellingham Bay and British Columbia Railroad was changed to Bellingham and Northern Railway. At that time the joint rates in that tariff to stations on the newly named Bellingham and Northern Railway generally applied by way of the Great Northern or Northern Pacific or Canadian Pacific Railway or Union Pacific Railroad in connection with the Bellingham and Northern Railway, as well as over the Chicago, Milwaukee and St. Paul Railway in connection with the Bellingham and Northern Railway. Effective April 15, 1913, in Supplement No. 22 to Agent R. H. Countiss' I.C.C. No. 942, T.C. F.B. Tariff No. 4-I (BTR 187) all the above quoted routes, except the route Chicago, Milwaukee and St. Paul Railway

were cancelled leaving higher combination to apply over the other routes.

Effective May 5, 1916, in Supplement No. 3 to Agent R. H. Countiss' I.C.C. No. 1020, T.C.F.B. Tariff No. 4-M (BTR 528) the Idaho and Washington Northern Railroad was absorbed by the Chicago, Milwaukee and St. Paul Railway. This line extended from McGuires, Idaho, in a northerly direction to Metaline Falls, Washington. Prior to the [fol. 3595] time it was taken over by the Chicago, Milwaukee and St. Paul Railway the Idaho and Washington Northern Railroad joined the Canadian Pacific Railway, Great Northern, Northern Pacific and Union Pacific Railroad, as well as the Chicago, Milwaukee and St. Paul Railway, in through routes and joint rates. (See Western Gateways 18 and 18-A; Agent R. H. Countiss' I.C.C. No. 1020, T.C. F.B. Tariff No. 4-M.) These through routes and joint rates were continued by the Chicago, Milwaukee and St. Paul Railway after it took over the Idaho and Washington Northern Railroad until March 2, 1924, when the through routes and joint rates were cancelled in connection with the Canadian Pacific Railway, Great Northern and Northern Pacific, leaving through routes and joint rates in effect in connection with the Chicago, Milwaukee and St. Paul Railway or the Union Pacific Railroad. (See Agent R. H. Countiss' I.C.C. No. 1130, T.C.F.B. Tariff No. 4-T, Supplement No. 2, Page 1.) The through routes and joint rates in connection with the Union Pacific Railroad were subsequently cancelled effective October 1, 1925, in Supplement No. 9 to Agent R. H. Countiss' I.C.C. No. 1148, T.C.F.B. Tariff No. 4-U, leaving through routes and joint rates in effect only in connection with the Chicago, Milwaukee and St. Paul Railway.

I. and S. Docket No. 1852, *Transit on Lumber and Forest Products*, 83 I.C.C. 451, involved a proposed restriction of joint rates on lumber and other forest products originating [fol. 3596] on the lines of the Chicago, Milwaukee and St. Paul Railway in Washington and Idaho and delivered to connections at short-haul junctions, so as not to be subject to transit arrangements at stations in Washington, Idaho or Montana on the lines of such connections. Prior to the establishment of the restriction the joint rates applied over

through routes in connection with the Northern Pacific or Great Northern, or Spokane International Railway when shipments were accorded transit privileges at stations on the Northern Pacific Railway or Great Northern Railway or Spokane International Railway in Washington, Idaho or Montana. The Commission found that respondents had justified schedules which provided that as to shipments of forest products from points on the Metaline Falls branch to eastern destinations the joint rates applicable via Newport, Washington, Rathdrum and Grand Junction, Idaho, in connection with the Great Northern, Northern Pacific and Spokane International Railway, respectively, shall not be subject to transit arrangements at points in Washington, Idaho or Montana on the lines of the Great Northern, Northern Pacific or Spokane, International Railway in those instances in which rates, which are no greater than such joint rates, are applicable from the same points of origin to the same destinations over the Milwaukee direct or in connection with other lines via junctions in Montana or states east thereof, except that this restriction shall not apply to poles, posts, or piling creosoted in transit at Newport, [fol. 3597] Washington, Priest River, or Sandpoint, Idaho, and to the milling or manufacturing of match blocks at Sandpoint, Idaho. The restriction generally cancelled the application of the joint rates from points on the Metaline Falls branch and the Bellingham Northern line of the Milwaukee Road over through routes in connection with the Northern Pacific, Great Northern, or Spokane, International Railway to the extent that shipments were accorded transit privileges as described above.

In 1952 there developed a prospective movement of lumber from Cusick and Metaline Falls, Washington, stations on the Metaline Falls branch of the Milwaukee Road to eastern destinations which required milling in transit at Albeni Falls, Idaho, a station on the Great Northern Railway. Although there were joint rates in effect from and to the origins and destinations involved via the Milwaukee Road to Newport, Washington, thence Great Northern Railway to Twin Cities, Minnesota, and connecting lines beyond over which route Albeni Falls was directly intermediate between Newport, Washington, and Twin Cities, Minne-

sota, and although milling in transit of lumber at Albeni Falls was permitted in the transit tariff, the restriction in the rate tariff previously referred to would not permit application of the joint rate via this route with transit at Albeni Falls. In the negotiations which followed the Milwaukee Road proposed the establishment of transit at Albeni Falls with so-called "loop" routing: namely, Milwaukee Road-Newport, Washington, Great Northern-Albeni [fol. 3598] Falls, Idaho, Great Northern-Newport, Washington, Milwaukee Road via Mobridge, South Dakota. The Great Northern was agreeable to the proposal provided an alternate route was established; namely, Milwaukee Road-Newport, Washington, Great Northern-Twin Cities, Minnesota, and connecting lines beyond; but the Milwaukee Road refused to join in the alternate route contending "It would moreover, retain to us the long haul which is properly due us as the origin line" (Chicago, Milwaukee, St. Paul and Pacific Railroad Company, letter dated Seattle, Washington, June 12, 1952, file F-127, to Mr. R. P. Starr, W.T.M., Great Northern Railway, Seattle, Washington, and signed by Mr. Paul Wilson, Western Traffic Manager). (I. and S. 1392.) The transit privilege was established with the "loop" routing only as shown above and is now published in Item 1490, Agent W. R. Watson's I.C.C. 873, N.P.C.F.B. Tariff 34.

From this it may be seen that as far back as 1897 the Great Northern had its joint rates applying between eastern transcontinental groups and stations on its line in the Pacific Northwest confined to through routes which afforded it the long haul. The situation with respect to stations served by the Northern Pacific in the Pacific Northwest at that time was substantially the same as that of the Great Northern. When the Milwaukee Road built to the Pacific Northwest that line limited the joint rates to or from its stations in the Pacific Northwest to its long haul west of Mobridge, South Dakota. Over the years as each of these [fol. 3599] trans-continental railroads has either secured control of or absorbed other lines of railroad, each of these trans-continental lines has followed to the fullest extent possible, a uniform practice of confining the joint rates of

the newly acquired lines to the same through routes as existed on the trans-continental line which acquired it. The Union Pacific has followed a somewhat similar practice, and, as has been shown, has endeavored to protect its long haul where the joint rates apply over through routes via Missouri River crossings. It should be noted that the practice was followed not only in connection with the traffic originated by each of these railroads in the Pacific Northwest, but also on the traffic each line terminated in that area as well.

Q. Will you now outline in detail, please, the present tariff routing in connection with trans-continental traffic participated in by the S. P. and S. System lines jointly with the Great Northern?

A. In connection with trans-continental traffic between eastern territory and stations on the S. P. and S. which are common with the Great Northern, such as Portland, Oregon, and Vancouver, Washington, joint rates generally apply over through routes via Twin Cities, Minnesota, or Laurel, Montana, and the Great Northern to Spokane, Washington, thence S. P. and S. to the same extent as the rates apply over through routes via Twin Cities, Minnesota, or Laurel, Montana, and Great Northern to destination. As an ex- [fol. 3600] ample, the rates apply to Portland, Oregon, via Twin Cities, Minnesota, or Laurel, Montana, thence Great Northern to Portland, Oregon, or via Twin Cities, Minnesota, or Laurel, Montana, and Great Northern to Spokane, Washington, S. P. and S. to Portland, Oregon.

Q. If I might interrupt there, Mr. Tein, will you point out those routes on the map, Exhibit No. 110?

A. St. Paul and Minneapolis are blocked out on the eastern terminal of the Great Northern. Laurel, Montana, is blocked out on the line extending south from Great Falls, Montana. Spokane, Washington, is also blocked out and appears in the eastern part of the state, and, of course, Portland and Vancouver are also blocked out.

Now, the rates apply over routes through either the St. Paul or Minneapolis or Laurel, Montana, thence the Great Northern Railway, all the way to Spokane, or all the way to Vancouver, Washington, or Portland, Oregon. The same

joint rates also apply via the Twin Cities thence to Portland, Oregon, or via the Twin Cities to Spokane, Washington, S. P. and S. to Portland, Oregon.

Q. Is this true west of Spokane the rates apply over alternate routes, one, the Great Northern route over its own line going westward from Spokane through Wenatchee to Everett, south down through Seattle, Tacoma to Portland and over the S. P. and S. route through Pasco, Wishram, to Portland.

[fol. 3601] A. That is right.

Q. You may proceed, Mr. Tein. Before proceeding I would like to ask you whether or not generally those two alternate routes form the pattern of the S. P. and S. or of the Great Northern routes in connection with the S. P. and S.?

A. They do, to the territory west and south of Portland, there are routes to the territory east of Vancouver only to a very limited extent.

Q. I assume you will develop those routes as you go along.

You may proceed.

Mr. Maguire: Before Mr. Tein proceeds could I ask a question. It merely deals with explanatory matter in connection with Exhibit No. 110.

Exam. Dishman: All right.

Mr. Maguire: Could you tell me as to the source of this printed matter which is pasted in the lower left-hand corner of Exhibit 110?

The Witness: Railway Equipment Register.

Mr. Maguire: From the Railway Equipment Register?

The Witness: Yes, sir.

Mr. Maguire: Thank you, that is all.

By Mr. Torinus:

Q. You may proceed, Mr. Tein.

A. Between eastern territory and stations on the S. P. and S. west of Portland, Oregon, on the Astoria line or on the Keasey, Oregon, branch via the Twin Cities, Minnesota, [fol. 3602] or Laurel, Montana, interchanges, the joint rates apply either via Portland, Oregon, giving the Great North-

ern its maximum haul or via Spokane, Washington, giving the S. P. and S. the haul west of that junction. As an example, to Astoria, Oregon, the joint rates apply via Twin Cities, Minnesota, or Laurel, Montana, and Great Northern, Portland, Oregon, thence S. P. and S., or via Twin Cities, Minnesota, or Laurel, Montana, and Great Northern, Spokane, Washington, thence S. P. and S.

Between eastern territory and stations on the S. P. and S. east of Vancouver, Washington; that is, stations located between Vancouver, Washington, and Spokane, Washington, via the Twin Cities, Minnesota, or Laurel, Montana, interchanges, the joint rates do not apply over the Great Northern's line west of Spokane through Everett and Seattle to its Vancouver, Washington, junction with the S. P. and S., but apply only via the S. P. and S. west of Spokane, except that to or from stations between Vancouver, Washington, and Wishram, Washington, including Wishram, the rates also apply via Great Northern, Vancouver, Washington, thence S. P. and S. in connection with shipments of grain accorded transit privileges at Vancouver, Washington, or dressed poultry accorded transit privileges at points on the Great Northern, north of Vancouver, Washington, or grain accorded transit privileges at points on the Great Northern, Felida, Washington, to Everett, Washington, inclusive.

Between eastern territory and stations on the Oregon [fol. 3603] Electric via the Twin Cities, Minnesota, or Laurel, Montana, interchanges, the joint rates apply either via Portland or Willbridge, Oregon, giving the Great Northern its maximum haul, or via Spokane, Washington, in connection with the S. P. and S. As an example, to Eugene, Oregon, the joint rates apply via Twin Cities, Minnesota, or Laurel, Montana, Great Northern, Portland or Willbridge, Oregon, thence Oregon Electric, or via Twin Cities, Minnesota, or Laurel, Montana, Great Northern, Spokane, Washington, S. P. and S., Willbridge, Linnton or Portland, Oregon, thence Oregon Electric.

Between eastern territory and stations on the Oregon Trunk via the Twin Cities, Minnesota, or Laurel, Montana, interchanges, the joint rates apply only via Spokane, Wash-

ington, S. P. and S., Wishram, Washington, thence Oregon Trunk except that the rates also apply via Great Northern, Vancouver, Washington, S. P. and S., Wishram, Washington, thence Oregon Trunk, in connection with shipments of grain accorded transit privileges at Vancouver, Washington, or dressed poultry accorded transit privileges at points on the Great Northern, north of Vancouver, Washington, or grain accorded transit privileges at points on the Great Northern, Felida, Washington, to Everett, Washington, inclusive.

Between eastern territory and stations on the Great Northern on its coast line extending north from Vancouver, Washington, to Vancouver, British Columbia, the S. P. and [fol. 3604] S. participates in certain through routes and joint rates as an intermediate carrier between Spokane, Washington, and Vancouver, Washington, or Portland, Oregon. The route is via Twin Cities, Minnesota, or Laurel, Montana, Great Northern, Spokane, Washington, S. P. and S., Vancouver, Washington, or Portland, Oregon, thence Great Northern. Via Vancouver, Washington, this route applies generally on all commodities to or from stations north of Vancouver, Washington, to and including Centralia, Washington. In other words, the Great Northern permits the S. P. and S. to participate as an intermediate carrier on commodities generally to points on its own line along the coast as far north as Centralia on the same basis as the Great Northern can handle the traffic over its own railroad.

To or from Great Northern stations north of Centralia the S. P. and S. is also permitted participation but only in connection with traffic accorded certain transit privileges. To or from stations north of Centralia, Washington, to and including Everett, Washington, the Vancouver route applies westbound on grain or grain products, also poultry and stock feed accorded transit privileges at Astoria or Portland, Oregon, or Vancouver, Washington, and on all other commodities either westbound or eastbound accorded transit privileges at intermediate points or at Portland, Oregon, or points south thereof. To or from stations north of Everett, Washington, to and including Vancouver,

British Columbia, the route applies on all commodities [fol. 3605] (except grain, grain products, poultry and stock feed), either westbound or eastbound, accorded transit privileges at intermediate points or at Portland, Oregon, or points south thereof.

The S. P. and S. is also permitted to participate as an intermediate carrier on certain traffic via Portland, Oregon, where transit is accorded. The Portland route applies to or from Great Northern stations north of Vancouver, Washington, to and including Ballard, Washington, on westbound grain or grain products, poultry and stock feed, agricultural implements or parts, twine or cordage, vehicle parts, grading or road making implements or parts, or cooling boxes or refrigerators and cooling or freezing apparatus, combined, on eastbound berries or fruit accorded transit privileges at certain specified points, and on all other commodities westbound or eastbound accorded transit privileges at intermediate points, or at Portland, Oregon, or at points south thereof. North of Ballard, Washington, to Vancouver, British Columbia, the application of the transit route via Portland, Oregon, is the same as that previously explained for the route via Vancouver, Washington, except that the Portland, Oregon, route also applies westbound on agricultural implements or parts and the other commodities named therewith to stations north of Ballard, Washington, to and including Vancouver, British Columbia. The rates to these same destinations also apply in connection with the Great Northern to destination and are also generally subject to the same transit privileges as [fol. 3606] outlined above, except as to transit at Astoria, Oregon.

Between eastern territory and Southern Pacific Company stations in Oregon (except stations on the Lakeview, Oregon, branch) and in California, Colfax, Banning and west thereof, through routes and joint rates are in effect via Twin Cities, Minnesota, or Laurel, Montana, Great Northern, Chemult or Portland, Oregon, thence Southern Pacific Company. The same joint rates also apply in connection with the Spokane, Portland and Seattle Railway via Twin Cities, Minnesota, or Laurel, Montana, Great

Northern, Spokane, Washington, S. P. and S., Portland or East Portland, Oregon, thence Southern Pacific Company. Similar routes also apply to or from stations on the Northwestern Pacific Railroad via the routes named above, thence Southern Pacific Company to Schellville, California, and Northwestern Pacific Railroad. Similar routes also apply to or from stations on the Atchison, Topeka, and Santa Fe Railway in California, Barstow and west to San Diego and Stockton via the routes named above, thence Southern Pacific Company to Stockton, California, and Atchison, Topeka and Santa Fe Railway. There is also in effect a route to these Atchison, Topeka and Santa Fe Railway stations and to Western Pacific Railroad stations south of Bieber, California, to and including San Francisco, California, via Twin Cities, Minnesota, Great Northern, Spokane, Washington, S. P. and S., Wishram, Washington, Oregon Trunk Railway, Bend, Oregon, Great Northern, Bieber, California, [fol. 3607] Western Pacific Railroad or Western Pacific, Stockton, California, thence Atchison, Topeka and Santa Fe Railway. This latter route is limited to westbound application and applies only on shipments accorded partially unloading in transit privileges at Portland, Oregon, or at points in California, located on the lines named.

Mr. Maguire: Could I interrupt a moment?

About five lines up from where you stopped you say Western Pacific Railroad or Western Pacific, Stockton, California. I don't quite follow the destination there.

The Witness: To destinations on the Western Pacific the route is by Bieber and the Western Pacific. To destinations on the Santa Fe the route is via Bieber, Western Pacific to Stockton and thence the Santa Fe.

Mr. Maguire: Oh, yes, I get it. I just didn't follow that closely.

Routes similar to those previously mentioned in connection with the Southern Pacific Company also apply to or from stations on the following short lines; Petaluma and Santa Rosa Railroad, San Francisco and Napa Valley Railroad, Stockton Terminal and Eastern Railroad, Central California Traction Company, California Western Railroad, Modesto and Empire Traction Company, Santa Maria

Valley Railroad, Visalia Electric Railroad, Pacific Electric Railway, Trona Railway, Ventura County Railway and Sunset Railway. Such routes apply Great Northern, Spo- [fol. 3608] kane, Washington, thence S. P. and S. via Portland or East Portland, Oregon, and Southern Pacific, thence the short lines named above.

From the above it may be seen that as a general rule the S. P. and S. participates in these joint rates wherever that line could reasonably expect to participate in the traffic and in addition participates in joint rates such as to or from the stations on the Great Northern's coast line where the entire haul west of the Twin Cities, Minnesota, or Laurel, Montana, can be performed by the Great Northern.

Q. Explain briefly, please, the routing application with respect to rates within the territory Montana and west to the extent there are joint rates participated in by the Great Northern and the S. P. and S. and its subsidiaries?

A. This pattern of the trans-continental rates is closely followed in the rates within the territory Montana and west. Rates between S. P. and S., Oregon Electric, or Oregon Trunk stations on the one hand and Great Northern stations east of Spokane in Washington, Idaho and Montana, generally apply via the same interchange points as has been explained in connection with the trans-continental rates. Likewise, the S. P. and S. generally participates in the joint rates between stations on the Southern Pacific Company in Oregon or California and Great Northern stations east of Spokane, Washington. Also between stations Centralia, Washington, to Felida, Washington, inclusive, on the Great Northern, on the one hand, and Great Northern stations east of Spokane, Washington, on [fol. 3609] the other hand the S. P. and S. as a general rule does participate in joint rates with the Great Northern to the same extent as the rates apply over the Great Northern direct.

The joint trans-continental rates of the S. P. and S. in connection with the Great Northern from or to eastern territory were patterned after the rates of the Great Northern to or from its stations in the Pacific Northwest and as to the routing provisions governing these joint rates of the

S. P. and S. in connection with the Great Northern the same routing provisions which govern the Great Northern rates have generally been made applicable to the S. P. and S. rates.

[fol. 3610] By Mr. Torinus:

Q. Mr. Tein, I would like to have you take up next your Exhibit No. 112, which has been distributed. Will you explain briefly what that is?

A. Exhibit No. 112 is a showing of the lumber mill capacity at stations in Washington west of Spokane and in Oregon, Pendleton and west, compared with lumber mill capacity at stations in Idaho, Montana, and in Washington, Spokane and east, available to the Milwaukee, Great Northern, and the Northern Pacific through Avery, Leonia, and Cabinet, Idaho, respectively.

Q. Before taking up an explanation of your exhibit in detail, can you tell me the source of the information contained therein?

A. The information with respect to the names of the firms, the shipping points, and the other data that appears in the exhibit was taken from Crow's Buyer's and Seller's Guide of the western lumber industry.

Q. Is the data contained in Exhibit No. 113 also taken from Crow's lumber digest to which you have just referred?

A. Yes, sir, it is taken from the same guide.

Q. Before we proceed with the explanation, let me ask you one further question, Mr. Tein. Is all of the data on each of these two exhibits, Exhibit No. 112 and Exhibit 113 obtained from Crow's?

A. No. There are eight firms listed in the Crow's Guide in connection with which either the per cent of Idaho white pine or the capacity, and the per cent of Idaho white pine was not shown.

[fol. 3611] Q. Not shown in Crow's?

A. It was not shown in Crow's. Let me cite an example of that. The Diamond Match Company is listed in Crow's as having four mills located respectively at Cusick, Metaline Falls, Albeni Falls, and Cedars. Now, the capacity of

those four mills appears in Crow's as one figure, and I had that broken down to show the respective capacities of each of those mills. That is representative of what I did in connection with these eight firms.

Q. And was that breakdown made as the result of a direct inquiry of the Diamond Match Company?

A. Yes.

Q. Is the breakdown in Exhibits 112 and 113 in the other seven instances the result of direct inquiries made to the particular firms by you or Mr. Hart or those working under your direction and supervision in the compilation of these exhibits?

A. That is the way the information was obtained.

Q. Will you state, Mr. Tein, whether or not in the regular course of the business of the railroad traffic department, such as the traffic department of the Great Northern, the officials of the department keep themselves informed as to the capacities of lumber mills located on their lines?

A. Yes. The Great Northern, as an example, publishes a list of lumber and shingle mills and dealers in poles and piling at points in British Columbia, California, Idaho, [fol. 3612] Montana, Oregon, and Washington, and the material from which this circular is compiled was obtained by contacting the respective mills.

Q. As I understand it, the Great Northern circular, to which you have just referred, has not been brought up to date, and this information around which Exhibits 112 and 113 were compiled was obtained entirely from Crow's and from supplemental inquiries you have referred to?

A. That is correct.

Q. Would you give for the record the date of that issue of Crow's lumber digest to which you referred?

A. It says here copyright July 1953 and is amended by supplement published March 1954.

Q. Does your exhibit reflect the information not only in the July 1953 issue but also the subsequent supplement?

A. It does.

Q. All right, Mr. Tein, you may proceed with your explanation, taking up first Exhibit No. 112.

A. Pages 2 to 8 of the exhibit contain a list of individual lumber mills in Washington west of Spokane. It shows the

name of the firm, the shipping point, the species of lumber and timber produced, the normal daily capacity, eight-hour shift.

The capacity of these mills has been allocated to the Milwaukee through Avery, Idaho, the Great Northern through Leonia, Idaho, the Northern Pacific through Cabinet, Idaho, to the extent the rates from the shipping points shown are [fol. 3613] applicable via the Milwaukee through Avery, the Great Northern through Leonia and the Northern Pacific through Cabinet.

Q. In other words, if I understand you correctly, Mr. Tein, where you have a mill in the State of Washington west of Spokane at a common point between, that is, a point which is common among the Northern Pacific, Great Northern, and Milwaukee, such as Tacoma, you show the normal daily capacity for eight-hour shift of that particular mill as available to the routes of all three lines, is that correct?

A. That is correct.

Q. And where a particular mill is located on one or the other of the three lines, then, of course, the capacity is located to move at that particular line—is allocated to the route of that particular line, is that correct?

A. That is correct.

The mills have been segregated into groups according to the railroads serving the shipping point. As an example, the first block or group shown on page 2 of the exhibit are mills which are located at points which are reached only over the route of the Milwaukee Road, in other words, all of these shipping points are local stations on the Milwaukee.

Now, due to the varying application of rates from the origins on these several lines which are included in the exhibit it was necessary to separate the destination territory which could be reached via these respective lines, that is, [fol. 3614] the Milwaukee through Avery and the Great Northern through Leonia and the Northern Pacific through Cabinet.

As a further explanation of that, refer to the heading of columns 5, 6, and 7, which cover the Milwaukee Road through Avery, Idaho. This territory has been separated into three groups: the group covered by Column 5 is what we have been referring to in this case as Milwaukee Road

local territory and is covered by Mr. Engel's Exhibit 9. It includes the territory that is not shown in red on that exhibit.

Column 6 is the territory of Chicago, Illinois, and the other points shown in red on the same Exhibit 9.

Column 7 covers the territory east of Chicago via across lake routes. Via the Great Northern through Leonia, Idaho, the destination territory has been divided into two groups covered by columns 8 and 9.

Column 8 represents the territory Twin Cities and west to the Montana-North Dakota state line.

Column 9 covers the territory beyond the Twin Cities via connecting lines of the Great Northern, including the Milwaukee Road.

The territory reached by the Northern Pacific through Cabinet, Idaho, has been similarly divided, namely, the Twin Cities and west to the Montana-Dakota state line is in column 10 and beyond the Twin Cities via connecting lines, including the Milwaukee, is represented by Column 11.

[fol. 3615] From these Milwaukee origins named in the first group there are rates which apply to the territory covered by columns 6, 7, and 8. So the capacity of these mills has been allocated to that destination territory.

Now, to the destination territory covered by columns 8 and 9 there are no joint rates from these shipping points, with the exception of Everson. There are joint rates from Everson applicable via the Milwaukee Road to Bellingham thence the Great Northern. So the capacity of that mill has been allocated to the Great Northern in both columns 8 and 9 because there are joint rates in effect. However, I would like to point out that the joint rates that apply from Everson are restricted so as not to permit transit on the Great Northern in the states of Washington, Idaho, or Montana.

From the same mills to the Northern Pacific, to the territory that can be reached via the Northern Pacific, there are through rates to the extent that an allocation has been made, as shown in these columns.

I might explain that a little further by saying that there are no single factor rates from Port Angeles,

Carnation, and Sequim, there are no single factor joint rates from those origins, in connection with the Northern Pacific through Cabinet, Idaho, and that is why no allocation has been made in those columns.

COLLOQUY BETWEEN EXAMINER AND COUNSEL

Mr. Maguire: May I interrupt you, Mr. Tein. [fol. 3616] If the Examiner please, I had my doubts as to the relevancy of these two exhibits when they were first shown to me, and I have listened to the witness's testimony regarding them, and I cannot yet see any connection between the figures shown here and the issues in this case. In the absence of any statement linking them up with the issues I wish to object to them and move the testimony be stricken and object to any further testimony upon these exhibits.

Exam. Dishman: What is the purpose of these exhibits, Mr. Torinus?

Mr. Torinus: If the examiner please, the witness has just started, of course, to explain these exhibits, and the explanation will be one in considerable detail. There has been throughout these hearings testimony concerning the stopping of cars of lumber and forest products in transit with complete loading cars which have originated at stations in Washington and Oregon west of Spokane to complete loading at stations east of Spokane. The Milwaukee has endeavored to make quite a point of the fact that St. Maries, Idaho, is a very convenient point for lumber shippers, particularly those who ship from points on the S. P. and S. to complete loading. Now, we think that the record so far, particularly with the emphasis on St. Maries, Idaho, has presented quite a distorted picture, and we wish through this exhibit and through other testimony to engage to portray the general situation, the capacity of these lumber mills on the West [fol. 3617] Coast, in the states of Oregon and Washington, west of Spokane, the capacity of the mills in the area east of Spokane in which St. Maries is located, the routes from the territory west of Spokane through the territory east of Spokane to the entire United States, indicating

the opportunities which are available on the one hand to shippers west of Spokane to stop cars to complete loading at these pine mills east of Spokane, the opportunities that the mills east of Spokane have to draw from mills in this large territory west of Spokane. We want to show the general picture, not only as it relates to St. Maries, Idaho, but as it relates to other mills on other railroads in the same general vicinity, and not only as it may relate to the lumber production on that relatively small territory served by the S. P. and S. but as it relates to lumber production in the entire territory from which, generally speaking, the same rates apply. I think it rounds out the picture and I think the Commission would want to know the situation portrayed by this exhibit.

Exam. Dishman: Do you have anything more, Mr. Maguire?

Mr. Maguire: Yes, if Mr. Torinus is finished.

Exam. Dishman: Are you through?

Mr. Torinus: I am finished for now, yes, sir.

Mr. Maguire: Mr. Examiner, it impresses me, I was quite interested in Mr. Torinus's recital of the purpose of these exhibits, but the only reference to the exercise of transit privileges at mills or points on the Milwaukee [fol. 3618] east of Spokane was in connection with lumber originating on the S. P. and S. system. Now, then, here we have figures showing very large tonnage, purporting to show very large tonnage, originating in territory which is not in issue in this case. We are not interested in the production of mills west of Spokane except what mills may be in the State of Washington or what mills there may be on the S. P. and S. in the State of Washington, and the testimony has been that there are very few.

My point is this, I think undoubtedly, judging from the tone of the cross-examination of the complainant's witnesses and from comments that have been made by the defendants' and intervenors' witnesses, it is the purpose of these exhibits to show that, after all, the Milwaukee should not concern itself about lumber originating upon the S. P. and S. because it has other lumber origi-

nating at other points, at points on its own line, and, therefore, I think the corollary to that would be that even if there be a violation of the Act in the closing of the Spokane Gateway by reason of the lack of joint through rates with the S. P. and S. that we should not be given any relief, because, after all, we have business from other sources.

Now, it is my contention that regardless of the volume of lumber business which may be handled by the complainant elsewhere on its line, if there is a violation of the Act on the part of the S. P. and S. and its connections in the withholding of joint through rates with the Milwaukee, that violation should be remedied regardless of [fol. 3619] the economic position of the Milwaukee with regard to its other traffic.

As a matter of fact, Section 15 of the Act says that the financial situation of the carriers involved shall not be taken into consideration. I will read that. I haven't quite correctly quoted that.

Mr. Torinus: No through route or joint rate shall be established for the purpose of assisting any carrier to meet its financial needs. And there is nothing about that in either one of these exhibits.

Mr. Maguire: Yes, I think that has a very familiar ring to it, Mr. Torinus.

And, on the other hand, there is nothing in the Act which says that a carrier, assuming the Milwaukee were the most prosperous railroad in the United States, which unfortunately it is not, but assuming that it were, there is nothing in the Act which says that if a railroad is prosperous enough even though it is deprived of certain joint through rates to which it would otherwise be entitled by law it should be denied the relief. Now, that's the only thing that I can see results from these exhibits.

Exam. Dishman: I want to ask a question about these Exhibits 112 and 113. Do they show lumber mills on the S. P. and S. in Washington?

Mr. Torinus: They do.

Exam. Dishman: Of course many others also?

[fol. 3620] Mr. Torinus: Yes, sir.

Exam. Dishman: Of course to the extent that they do show mills on the S. P. and S., there is no objection regarding that, is there?

Mr. Maguire: I haven't any objection to mills on the S. P. and S. But, of course, the entire design of the exhibit would collapse if it were restricted to that.

Mr. Torinus: May I be heard?

Exam. Dishman: Yes, but let's don't argue the case here. What I was going to say about these exhibits, what has been said, of course, goes to the weight to be accorded to the exhibits, and they do contain a list of mills, I suppose, on the S. P. and S., along with many others.

Mr. Maguire: I haven't found it, Mr. Examiner.

Mr. Cockrum: There are some on page 7.

Exam. Dishman: Yes. But what I wanted to ask, Mr. Torinus, is it necessary to go into great detailed explanation of these exhibits? Don't they largely explain themselves?

Mr. Torinus: Let me make a short statement, Mr. Examiner.

Mr. Maguire: Before you start in, Mr. Torinus, could I have just one word? I am not going to try to cut you off.

On the comment of the Examiner that it goes to the weight rather than to the admissibility, I can't concur in that. This is going to the admissibility themselves.

Exam. Dishman: I think what you said in your objec- [fol. 3621] tions that you referred to mills on the S. P. and S. Well, they do contain a list of mills on the S. P. and S., do they not?

Mr. Maguire: Yes. I would have no objection, for example, to the last box on page 7 and continuing over onto page 8 of the exhibit.

Exam. Dishman: Is it necessary to go into such great detail, Mr. Torinus, in the explanation of these exhibits?

Mr. Torinus: Let me make a short explanation, and then let me attempt to answer your question, Mr. Examiner.

Exam. Dishman: All right.

Mr. Torinus: And I would like to be quite specific.

There was testimony in this case by Mr. Pew of the St. Maries Lumber Company from which contentions

were made that it was necessary or desirable for Mr. Pew in the conduct of his business at St. Maries to draw lumber from points on the S. P. and S. to be stopped at St. Maries to complete loading and reshipment to the east. Now, these exhibits show, among other things, the vast territory from which Mr. Pew may draw, in addition to the S. P. and S., and including the S. P. and S. There was testimony from some of Mr. Maguire's witnesses who shipped lumber from points on the S. P. and S. that it might be desirable or convenient for them to stop cars to complete loading at St. Maries, Idaho. This shows the innumerable opportunities where those shippers may stop their cars to complete loading besides St. Maries, Idaho. [fol. 3622] Exam. Dishman: You mean from stations on the S. P. and S.

Mr. Torinus: From stations on the S. P. and S., yes.

Now, under Section 15 (3) of the Act, where the Commission is required to consider in a routing case public necessity or desirability, this is the type of evidence that is obviously directed to issues raised under that section, and, certainly, the Commission should want to know what is in these exhibits.

Mr. Tein is not going to go ahead in meticulous detail and explain each one of these pages. He started out on page 1 and explained that exhibit in some detail because the rest of the pages follow somewhat a pattern which page 1 illustrates. And, I am sure, unless Mr. Tein is permitted to give an adequate explanation, the exhibit may not be intelligible.

Exam. Dishman: I noticed he is reading material on the exhibit. Is it necessary to do that in detail?

Mr. Torinus: I believe, Mr. Examiner, he has some notes on some of the pages of the exhibit to which he is making reference to.

Exam. Dishman: My ruling at this time is that he may continue with the explanation.

You haven't offered the exhibits in evidence?

Mr. Torinus: No.

Mr. Maguire: Might I ask, Mr. Examiner, one question, and that is that counsel in his reply has devoted

his attention entirely to one point. Are these exhibits [fol. 3623] offered or will they be offered, however, to show that the Milwaukee Railroad, the complainant in the case, has so much other timber tonnage or lumber tonnage at its disposal that it shouldn't worry about the S. P. and S.?

Exam. Dishman: Can you answer that, Mr. Torinus?

Mr. Torinus: They will be offered in evidence. I am not going to permit Mr. Maguire to circumscribe the purposes for which these exhibits are introduced to the extent that they contain any evidence which is relevant to the issues, including the supply of lumber available to the Milwaukee and the extent to which it may participate in long-haul traffic over the route of the Milwaukee; certainly, I would expect these exhibits to be considered by the Commission. And if they contain any other evidence that is pertinent to any of the issues in the case, I would expect to be able to refer to them and expect the Commission to consider them.

Mr. Maguire: I am not trying to circumscribe counsel. I just want to smoke him out a little bit as to what the purpose of this exhibit is.

Exam. Dishman: Well, let's proceed.

By Mr. Torinus:

Q. Mr. Tein, have you any additional comments to make with respect to page 2?

A. I think I should explain page 2, and then if the pattern is then understood, why, I think we can go on quite rapidly from then on.

[fol. 3624] Q. All right, you may proceed.

A. The second group on page 2 covers a mill located at Monroe, Washington. This is reached over the route of the Great Northern and the Milwaukee, and the capacity of that mill has been allocated to the destination territory covered by the Milwaukee and the Great Northern but not to the Northern Pacific because there are no joint rates in connection with the Northern Pacific through Cabinet, Idaho.

The last block, the last group on that page, which continues over into the first group on the next page, covers mills reached over routes of the Great Northern and Northern Pacific or Milwaukee, and therefore the capacities of these mills has been allocated to each of the three lines.

Now, if that explanation is sufficient to show the pattern which has been used in making this exhibit, I think that would cover the—

Exam. Dishman: Cover it up to what page, the rest of the exhibit you mean?

Mr. Torinus: Oh, no, no, no. That takes care of the pages up to page 8.

By Mr. Torinus:

Q. I would like to ask you a question, Mr. Tein, with respect to page 2 before that is passed. Where you have, for example, in column 4—that is in the first block, down about the sixth line from the bottom—the words twenty to twenty-five thousand, the figures twenty to twenty-five [fol. 3625] thousand, which one of those figures is used in your total?

A. The smaller.

Q. In the total?

A. The smaller.

Q. The smaller of those figures?

A. Yes, sir.

Q. Thank you. Is that true wherever you show on any other pages of your exhibits two figures, do you always use the smaller one in the totals?

A. I have always used the smaller.

Q. Thank you.

A. That same pattern was followed in connection with pages 9 to 20, inclusive.

Q. For the record, Mr. Tein, will you point out the pages on this exhibit where you show mills that are reached over the route of the S. P. and S. or the route of the Oregon Electric and the Oregon Trunk?

A. S. P. and S. stations in Washington appear on pages 7 and 8 of the exhibit.

Mr. Maguire: Also 6, Mr. Tein?

The Witness: Yes, on page 6, where the stations are reached by the S. P. and S. and other lines. I missed that.

By Mr. Torinus:

Q. Page 9.

A. The S. P. and S. appears on page 9, the Oregon Electric on page 10, Oregon Electric again on page 11, [fol. 3626] the Oregon Trunk on page 11, and the Oregon Trunk on page 12, and the S. P. and S. appears on page 20.

Q. I believe you said that pages 9 to 20 cover the Oregon mills, is that right?

A. That is correct.

Q. Does that complete your explanation of pages 9 through 20?

A. Yes, sir.

Q. Now will you take up with page 21.

A. Page 21 is a recap of pages 2 to 20; lines 1 to 14 cover the origins in Washington, and lines 15 to 24 cover the origins in Oregon, line 26 is the grand total of the origins in Washington and in Oregon. The total normal daily capacity for the mills that have been shown in both states is 44,311,500. Column 3 shows that of that total 42,558,500—

Exam. Dishman: This is all listed there, isn't it? You wouldn't have to read it.

The Witness: Yes, sir.

A. It also shows the additional capacity that is sought in columns 4, 6, and 8.

By Mr. Torinus:

Q. And what is the purpose, Mr. Tein, of this showing on page 21?

A. It shows that to Milwaukee local territory that there is available today a greater capacity than what the Great Northern has available to it in the same territory, that is, comparing columns 3 and 9, and the same is true with [fol. 3627] respect to the Northern Pacific, as shown in column 11.

Q. Do you have any further comments with respect to page 21?

A. Yes. To Chicago and the points shown in red, which is comparable, covered by columns 5 and 6, which is comparable to, columns 10 and 12, there is presently available 38,331,500, and the additional sought is 3,195,000. The total of those two figures is 41,526,500. And that is greater than what the Great Northern has available to it through the Leonia, Idaho, or what the Northern Pacific has available to it through Cabinet, Idaho, as shown in columns 10 and 12. Compare columns 7 and 8, total of 40,410,000 pounds—

Q. (Interrupting) Feet; you said pounds.

Mr. Rockwood: You said pounds.

A. Excuse me; feet. —it would seem that the Milwaukee would have available to it a greater capacity than what the Great Northern has as shown in column 10 and something less, about 300,000 feet less, than what the Northern Pacific has in column 12.

By Mr. Torinus:

Q. Does that complete your explanation of page 21?

A. Yes, sir.

Q. Will you proceed, Mr. Tein, with an explanation of Exhibit 112, starting with page 22.

A. Pages 22 to 26 are a list of the mills located in the territory Spokane and east in the states of Idaho, Mon- [fol. 3628] tana, and Washington. Somewhat similar information has been shown here, but in addition there is shown whether or not stopping in transit to complete loading is permitted at these stations. In addition, this portion of the exhibit shows the per cent of Idaho white pine that is manufactured at these various mills. The mills likewise have been separated according to the railroad that serves the shipping point.

There is a recap of pages 22 to 26 appearing on page 27.

Q. All right, you may proceed with your explanation of page 27.

A. Page 27, column 2, shows that the capacity of all

these mills is 6,708,000 feet. The mills on the Milwaukee, as shown in column 3, have a capacity of 2,629,000. Comparing columns 3, 9, and 15, it will be noted that the mills served by the Northern Pacific have the greatest capacity, the Great Northern second, and that the mills along the Milwaukee have the least capacity.

Q. And these are all mills, if I understand you correctly, shown on pages 22 to 26 in the territory east of Spokane, Washington, is that correct?

A. That is correct.

The same situation obtains in connection with Idaho white pine, which is covered by columns 6, 7, 8, 12, 13, 14, and 18, 19, and 20, and the production of Idaho white pine at these mills is greater along the Northern Pacific than it is along the Great Northern or the Milwaukee.

[fol. 3629] Q. Why did you make a segregation of figures with respect to Idaho white pine, Mr. Tein?

Mr. Maguire: Just a moment. If the Examiner please—

Mr. Torinus: I will withdraw the question.

Mr. Maguire: I think you should.

Mr. Torinus: I will withdraw it to save time.

Exam. Dishman: All right.

Mr. Torinus: I think the reason for the segregation is probably apparent.

Mr. Maguire: Let's save the time and go ahead.

By Mr. Torinus:

Q. You may proceed to complete your explanation of page 27, Mr. Tein.

A. I believe that was all I have to say on page 27.

Q. All right, page 28.

A. Page 28 is a comparison of the mills in Washington west of Spokane and in Oregon, Pendleton and west, with the capacity of the mills in Washington, Spokane and east, and Idaho, and into Montana.

Lines 8 and 9 of the exhibit show the percentage of lumber available at completion of loading points to lumber available at origins in Washington west of Spokane and origins in Oregon, Pendleton and west.

Lines 10 and 11 of the exhibit show the number of board feet available at origins in Washington west of Spokane and in Oregon, Pendleton and west, for each 1,000 board [fol. 3630] feet available at the completion of loading point.

Stated in board feet, for each 1,000 board feet of all species produced under columns 9, 13, and 15, the Milwaukee presently has available to it 14,827,000, the Great Northern 12,797, and the Northern Pacific 11,146. In other words, the mills along the Milwaukee, Spokane and east, now have a greater relative capacity from which to draw in the territory west of Spokane in Washington and Pendleton and west in Oregon than either the Great Northern or Northern Pacific.

Q. The mills either on the Great Northern or Northern Pacific?

A. The mills located along either the Great Northern or Northern Pacific.

Mr. Maguire: Pardon me. It is understood, is it not, Mr. Examiner, that my objection runs to this entire line of testimony?

Exam. Dishman: Yes; the record will so show.

By Mr. Torinus:

Q. How about the ability of the lumber shipper on the S. P. and S., for example, Mr. Tein, or the lumber shipper generally in the states of Oregon and Washington, to find a pine producing mill on the Great Northern or Northern Pacific at which to stop a car to complete loading as compared with the ability to find a mill on the Milwaukee?

A. That is covered by page 27. The mills along the Northern Pacific east of Spokane have the greatest capacity of any of the three lines; that is represented by columns [fol. 3631] 15, 9, and 3 of that page, and on line 22.

Q. Does that complete your explanation of pages 27 and 28?

A. Yes, sir.

Q. Now Exhibit 113.

A. Exhibit 113 follows the same form and has been prepared along the same lines as Exhibit No. 112, and

I do not believe that any detailed explanation of it is necessary. But by referring to page 25, which corresponds with page 28 of the preceding exhibit, the same comparisons are made in lines 8 and 9 and 10 and 11 of page 25 as the corresponding lines of page 28. Using the 1,000 board feet ratio again which I mentioned previously, the Union Pacific has 11,992 or is fairly close to what the Northern Pacific has, that is, as to capacity and ratio.

Mr. Maguire: Mr. Examiner, there is an additional objection to Exhibit No. 113, and a motion to strike all of Mr. Tein's testimony relative to it, and that is even more remotely removed from the issues in this case than Exhibit 112, because from what I can see of it here it is a comparison of Union Pacific destinations, or available tonnage, potential tonnage, to Union Pacific destinations, rather than Milwaukee destinations or any territory reached by any other than a connection with the Milwaukee, the Union Pacific. It is even further—I am not going to belabor it further.

Exam. Dishman: What is the purpose of that, just briefly, Mr. Torinus?

[fol. 3632] Mr. Torinus: Before ruling is made on the objection I would like to ask Mr. Tein one or two questions.

Exam[redacted]man: All right.

By Mr. Torinus:

Q. Mr. Tein, are many of the mills in the states of Oregon and Washington which are reached through routes participated in by the Great Northern, Northern Pacific and Milwaukee to the territory in the United States east of Spokane also reached by routes over the Union Pacific in its connections to the eastern part of the United States?

A. Yes. Yes, they are.

Q. Your Exhibit 113, does that show mills in the same origin territory in the States of Washington and Oregon as shown on Exhibit No. 112?

A. It does.

Exam. Dishman: Including stations on the S. P. and S.?

The Witness: Yes, sir.

Exam. Dishman: And its subsidiaries?

The Witness: Yes, sir.

By Mr. Torinus:

Q. In fact, many of the same mills are on both of the exhibits, are they not?

A. There are a great number of the same mills on both exhibits.

Q. And many of those mills have a choice of routes, isn't that true, Mr. Tein, over the Great Northern, the Northern Pacific, the Milwaukee, or the Union Pacific?

A. That is correct.

[fol. 3633] Q. Exhibit 113, does that show the same general picture with respect to the mills which may desire to ship over Union Pacific routes in competition with routes in connection with the lines shown on Exhibit 112, as the picture shown in Exhibit 112 portrays?

A. It does.

Mr. Torinus: You may proceed with your—

Mr. Maguire (interrupting): Just a moment. I would like to be heard about that further, Mr. Examiner.

Exam. Dishman: All right.

Mr. Maguire: The sole purport of this exhibit is to take what in some cases is the same tonnage or same footage of lumber and then translate that practically all the way through by way of the Union Pacific via Huntington. Now, that is just about as far away from the issues in this case as anyone could get. I can't see any connection whatever.

Exam. Dishman: I don't know right now, of course, just how relevant it might be, but my ruling is that the witness may continue, and, of course, your objection will be noted.

Mr. Maguire: My objections will still run.

Exam. Dishman: Proceed.

Mr. Torinus: I might say, Mr. Examiner, in the public interest we are entitled to show the producing territory and all the routes which are available from that producing territory and the privileges available along those routes, [fol. 3634] and this simply rounds out the picture.

Exam. Dishman: All right, proceed.

By Mr. Torinus:

Q. You may proceed, Mr. Tein.

A. In addition, I would like to point out on page 3 the destination territory on the Union Pacific.

The first group are mills reached by the Milwaukee, as the exhibit shows, and the allocations have been made according to the extent that the rates apply. There are no joint rates to the territory covered by columns 7, 8, and 9.

Similarly on page 6, covering origins on the Great Northern Railway, there are no joint rates to the territory covered by columns 8 and 9.

And in the last block on page 7, covering origins reached by the Northern Pacific, there are no joint rates to the territory covered by columns 6, 7, 8, and 9.

Q. Does that complete your explanation of Exhibit No. 113?

A. I believe that is all I have to say.

Q. Did you explain, Mr. Tein, the map on page 2 of Exhibit 113?

A. No, I didn't do that.

Q. Will you do that, please, for the record?

A. On the map on page 2 I have drawn a blue line, a yellow line, and have enclosed certain lines within a brown line. These represent the application of the rates via the Huntington Gateway territory. As an example, from origins on the Great Northern Railway the rates apply to all the territory west of the yellow line. From origins [fol. 3635] on the Northern Pacific the rates are limited to destinations on the Union Pacific. And from origins on the Milwaukee the rates via Huntington are limited to destinations on the Union Pacific and to the territory west of the blue line and within the brown.

Q. Now, Mr. Tein, I would like to ask one or two general questions about your Exhibits 112 and Exhibit 113. May a carload of lumber which originates at a point on the Milwaukee, such as Morton in the State of Washington, be stopped for completion of loading at a point on the Great Northern east of Spokane, Washington, and shipped from there to final destination in official territory, for example?

A. There are no joint rates over the route you named.

Q. Is the situation the same with respect to a carload of lumber originating at a point on the Northern Pacific stopped to complete loading at a point east of Spokane on the Milwaukee, final destination east of Chicago?

A. Yes, the situation would be the same.

Q. And I take it from your Exhibit 113 the situation would be the same with respect to a carload of lumber originating at a local point on either the Great Northern or Northern Pacific stopped to complete loading at some point on the Union Pacific for final destination, let's say, east of the Mississippi River, is that right?

A. That is right.

[fol. 3636] Q. These exhibits, then, do they portray the general policy of the trans-continental lines in confining the lumber rates from the Pacific Northwest to their long-haul routes?

Mr. Maguire: Are you talking about Exhibits 112 and 113?

Mr. Torinus: Yes.

A. Yes, they portray that.

Mr. Torinus: Mr. Examiner, Mr. Tein has some other subjects to discuss, and I suggest that we have a short recess. We have some additional exhibits also—

Exam. Dishman: Have they been distributed?

Mr. Torinus (continuing): —which we would like to distribute now.

Exam. Dishman: We will take a short recess now.

(Short recess.)

Exam. Dishman: On the record.

Mr. Torinus: Mr. Examiner, may we have the exhibits identified?

Exam. Dishman: Yes.

The first one will be Exhibit No. 114.

(Defendant's Exhibit No. 114, Witness Tein, was marked for identification.)

Exam. Dishman: Which one is that?

Mr. Torinus: That is the one entitled "Great Northern Railway Company, Carload Shipments of Lumber and

Forest Products Originating on Spokane, Portland & [fol. 3637] Seattle System Lines and Stopped at Great Northern Stations East of Spokane for Complete Loading or for Partial Unloading in Transit, Calendar Year 1953". That is a two-page exhibit.

Exam. Dishman: It is really three sheets but two numbered pages?

Mr. Torinus: Yes, it is.

The next one will be—

Exam. Dishman: Exhibit 115.

(Defendant's Exhibit No. 115, Witness Tein, was marked for identification.)

Mr. Torinus: It is a one-page exhibit, saying "Carload Shipments of Western Lumber and Forest Products Stopped at Great Northern Stations for Partial Unloading by Central Lumber Company, Year 1953."

Exhibit 116 is a map.

(Defendant's Exhibit No. 116, Witness Tein, was marked for identification.)

Mr. Torinus: Exhibit No. 117 is a one-page exhibit, and it has to do with rates on barley.

(Defendant's Exhibit No. 117, Witness Tein, was marked for identification.)

Mr. Torinus: Exhibit No. 118 is a two-page large exhibit which has some information with respect to sheep.

(Defendant's Exhibit No. 118, Witness Tein, was marked for identification.)

[fol. 3638] By Mr. Torinus:

Q. Mr. Tein, will you please take up Exhibit No. 114 and proceed to explain that exhibit?

A. Exhibit No. 114 shows carload shipments of lumber and products originating on the Spokane, Portland and Seattle Railway System and stopped to complete loading on stations of the Great Northern east of Spokane, Washington, in the year 1953. The exhibit is largely self-explanatory.

It shows the car numbers, shipping date, the origin, the destination, the stop-off point, the route, and the species, and also the weight that was added at the stop-off point.

Q. Is that a complete showing of all shipments of lumber and forest products originating on the S. P. and S. and stopped to complete loading at our stations east of Spokane in that year?

A. That is right.

Q. When I said S. P. and S., of course, I referred to the S. P. and S. system, including the Oregon Trunk and Oregon Electric.

A. That is right.

Q. What is the total number of cars stopped to complete loading for the year 1953 on the Great Northern east of Spokane?

A. Total of 14 cars stopped in transit for complete loading.

Q. And how many to complete loading were Idaho white pine?

A. One car.

Q. I notice these cars, from the footnote on page 1, that these do not include any interplant shipments of the J. Neils Lumber Company, is that correct?

[fol. 3639] A. That is correct.

Q. Page 2.

A. I would like to make some comment about this before we go any farther.

From Witness Lear's Exhibit 46, under commodity classifications four eleven and four fifteen, there were a total of 16,146 cars of lumber, shingles, and lath in the commodities name in four fifteen; veneer plywood and built-up wood, there were a total of 16,146 cars delivered to the Great Northern by the S. P. and S. in the year 1953. Out of that total these are the number of cars as shown on page 1 of the exhibit that were stopped in transit to complete loading at stations on the Great Northern.

I believe the exhibit demonstrates that—

Mr. Maguire (interrupting): Just a moment. That statement is starting out with an argument.

Exam. Dishman: Just state what the exhibit shows.

Mr. Maguire: I think the exhibit is plain upon its face. He has explained what it shows. It is nothing but argument, particularly the way he is starting out.

Mr. Torinus: Mr. Tein has referred to Mr. Lear's Exhibit 46 and I believe that the witness should be permitted to say what the exhibit demonstrates with respect to the figures contained in Exhibit 46. That isn't argument.

Exam. Dishman: You might make comparisons. You [fol. 3640] don't have to use the word demonstrate.

A. The exhibit shows that out of this total of more than 16,000 cars which the S. P. and S. delivered to the Great Northern there were only 14 cars stopped in transit to finish loading, and out of those 14 cars there was just one car that was stopped to finish loading with Idaho white pine.

Exam. Dishman: Yes. Well, that is in the record.

By Mr. Torinus:

Q. Now, page 2, Mr. Tein, Exhibit 114.

A. Page 2 of the exhibit shows carload shipments of lumber and forest products originating on the Spokane, Portland and Seattle Railway system stopped for partial unloading on stations on the Great Northern in the year 1953.

Q. And what is the total number of cars shown on page 2?

A. There were 14 cars that stopped to partly unload.

Q. Do you have any information as to time with respect to the rates to the stop-off points shown on page 2 as compared with the rates to the respective destinations in connection with each of these cars?

A. I do.

Q. Will you give us that information, please?

A. Out of these 14 cars 8 of them stopped at a stop-off point and the destination had the same rate. Of four of the cars the stop-off point rate was one cent less than the destination.

Q. What was that last number of cars?

A. Four cars. There was one car where the rate at the

[fol. 3641] stop-off point was three cents less than to destination and where one car to the stop-off point was five cents less than the rate to the destination point.

This also is to be compared with that same 16,000 cars which we received from the S. P. and S. in the same year.

Q. Does that complete your explanation of page 2?

A. Yes, sir.

Q. Now, Exhibit 115, Mr. Tein.

A. Exhibit 115 is a statement of the carload shipments of western lumber and forest products stopped at Great Northern stations for partial unloading by the Central Lumber Company.

The Central Lumber Company has 32 yards located at stations throughout Minnesota, North and South Dakota, which are served by the Great Northern.

Q. Mr. Tein, was the Central Lumber Company one of the concerns mentioned by Mr. Meier, Lloyd Meier, in his testimony at Chicago?

A. It was.

Q. You may proceed, Mr. Tein.

A. This company, as far as the mills at stations served by the Great Northern, received no shipments via the S. P. and S. in connection with the Great Northern during that year nor any shipments from origins which are reached by the S. P. and S. but which may have moved via another line from a common point?

Mr. Maguire: Pardon me. Could I ask a question for [fol. 3642] clarification.

Does the exhibit show that?

The Witness: Does what?

Mr. Maguire: Does the exhibit bear out that statement?

The Witness: Yes, sir.

Mr. Maguire: Where does it say that?

The Witness: Under F, column F. There is the route, and the route does not contain the S. P. and S. as an origin line.

By Mr. Torinus:

Q. You are referring now to shipments which were stopped for part unloading, are you, Mr. Tein?

A. That is correct.

Q. And your statement with respect to Central Lumber Company's business was confined to shipments stopped for part unloading at yards of Central Lumber Company, is that correct?

A. That is right. That is all this exhibit deals with is cars stopped for partial unloading.

Mr. Maguire: That is all the witness's comment deals with, too, is what is shown by this exhibit.

Mr. Torinus: He has so stated, Mr. Maguire.

By Mr. Torinus:

Q. This exhibit shows for the year 1953 all of the carload shipments of western lumber and forest products stopped at Great Northern stations for part unloading by this particular company, is that correct?

A. That is correct.

Q. You may proceed.

[fol. 3643] A. The rates are not shown to the stop-off points and to the destinations on the exhibit, but I have checked them and nine of the cars, in connection with nine of the cars, the rate to the stop point, stop-off point, and the rate to the destination were the same. In connection with seven of the cars the rate to the stop-off point was one cent less than the rate to the destination. In connection with three of the cars the rate to the stop-off point was two cents less to the destination. And in connection with one car the rate to the stop-off point was three cents less than the rate to the destination.

Q. Do you have any further comment with respect to Exhibit 115?

A. Yes; I think I should point out that during 1953 there was a full line of joint rates from origins on the Spokane, Portland and Seattle system to destinations on the Great Northern Railway at which yards of this company are located.

Q. In other words, had the Central Lumber Company desired to draw lumber from S. P. and S. points for stopping to part unload at any of its yards on the Great Northern, final destination another yard on the Great Northern,

rates were available and they could have performed that operation, is that correct?

A. That is correct.

Q. Now, Exhibit No. 116.

A. On Exhibit 116 I have shown what is commonly referred to as a cross-over route. I have selected the so-called cross-over route from Milwaukee road origins in the [fol. 3644] Pacific Coast on lumber to destinations on the Great Northern Railway.

Q. I notice you don't show on the map by specific designation the origin territory on the Milwaukee for any of these cross-over routes.

A. No, I haven't done that.

Q. Can you explain why that is, Mr. Tein?

A. Well, the map does not show very clearly the Milwaukee, the territory served by the Milwaukee Road, or the lines of the Milwaukee Road, but the origin in connection with the cross-over routes are generally located at the ends of branch lines so that as a general rule practically the entire origin territory of the Milwaukee Road is covered by these cross-over routes.

Q. Would Port Angeles over on the Olympic Peninsula be a good example of the Milwaukee origin?

A. Yes, I am quite sure that that is one of the origins embraced in these cross-over routes.

Q. And that is shown on Exhibit 116, is it?

A. Yes, that appears there.

Q. All right, you may proceed.

A. Now, to the territory colored red, the joint rate applies via the Milwaukee road to Butte, Montana, thence the Great Northern Railway. To the territory colored yellow the joint rates apply via the Milwaukee road to Ellendale, North Dakota, and that junction has been blocked off in brown.

Q. And the destination territory is also in brown?

[fol. 3645] A. And the destination territory has been colored brown.

To the destination territory colored yellow the joint rate applies Milwaukee Road to Aberdeen, thence the Great Northern. And to the territory colored green the joint rate applies Milwaukee road to Vienna and the Great Northern.

Q. That is Vienna, South Dakota?

A. Vienna, South Dakota.

Now, cars which are in the red territory, that come into the red territory, fall into a so-called pocket in that there are no joint rates via the same route to points beyond the red territory. Likewise cars coming into the yellow territory fall into a pocket and cannot get out of that territory at joint rates because there are no joint rates to points beyond via the same route. The same situation holds true with respect to cars coming into the brown territory and into the green territory.

Now, the situation that I have explained here is typical of the three northern lines, the Great Northern and the Milwaukee and the Northern Pacific. The cross-over routes of the Great Northern on to the Milwaukee are likewise restricted and cars falling into the destination area over that cross-over route likewise go into pockets. The same is true from origins on the Northern Pacific going on to either the Great Northern or the Milwaukee, those cars likewise fall into pockets.

Now, that is not an unusual thing. Cars originating on the Union Pacific likewise fall into pockets on the Great [fol. 3646] Northern and the Northern Pacific. The Union Pacific and the Great Northern do not have joint rates to the territory east of the Twin Cities, so that cars coming into the area of the Great Northern cannot be reconsigned east of the Twin Cities. The same is true with respect to traffic originating on the Union Pacific coming into the Northern Pacific territory. The joint rates on lumber from origins on the Great Northern and Northern Pacific, for example, are not applicable via the Laurel route to the territory east of the Mississippi River generally, so that cars coming into that territory likewise fall into a pocket because they cannot be reconsigned into so-called official territory. The joint rates just do not apply via those routes. So that cars falling into so-called pockets is not an uncommon thing.

Q. Now, Mr. Tein, let me see if I understand you correctly. Take a shipment originating on the Milwaukee, let's say, at Morton or Port Angeles, and routed Milwaukee, Butte, thence Great Northern to Devils Lake, North Dakota. Could such a car be diverted from Devils Lake, North Dakota, to, say, Grand Forks, North Dakota?

A. Not on the joint rate.

Q. Could a shipment originating at one of those origins be consigned via Milwaukee to Butte, thence Great Northern, for partial unloading at Devils Lake, final destination Grand Forks?

A. No.

Q. And I take it from your testimony that none of those [fol. 3647] shipments moving over any of the cross-over routes you have described could terminate at destinations east of the eastern termini of the Great Northern?

A. That is right.

Q. And the situation you have described with respect to the Milwaukee and as portrayed on Exhibit 116 likewise exists with respect to cross-over routes from origins on other railroads, is that correct?

A. That is right.

Q. Now you may take up your Exhibit No. 117. Before you take up Exhibit 117, Mr. Tein, I believe in our preparation we had planned for you to cover another subject with respect to which you have no exhibit, and that relates to steel grain bins. Do you wish to take that up before discussing Exhibit 117?

A. Yes, sir.

Q. All right, you may proceed.

A. The Great Northern Railway I.C.C. Number A-8450 authorizes transit privileges on iron or steel articles at Sioux Falls, South Dakota. This tariff in items 145 and 160 provides for transit on shipments originating east of the Illinois-Indiana state line and destined to North Pacific Coast territory.

The items 155 and 165 of the same tariff authorize transit on shipments originating east of the Illinois-Indiana state line, when destined to stations in trans-continental south coast territory.

[fol. 3648] The applications provide for origins from trans-continental groups A, B, and C, which generally comprises all the territory commonly called official territory. And the transit privilege is available to destinations on the Great Northern Railway and various other lines, it embraces all stations on the S. P. and S., the Oregon Electric and Oregon Trunk, destinations on the Southern Pacific in

Oregon except the Lakeview branch, destinations on the Southern Pacific in California, Colfax, Banning, and west thereof which embraces most of the state; destinations on the Northwestern Pacific Railroad, stations on the Atchison, Topeka and Santa Fe in California, Barstow and west to San Diego and San Francisco; also destinations on the Western Pacific in California, Calenva, California, and west; also a number of destinations on short lines.

This transit privilege is subject to routing into Sioux Falls via certain lines. As an example the inbound routing to Sioux Falls is either over the Illinois Central as an example, over the eastern lines to Chicago, Illinois, thence the Illinois Central to Sioux Falls or the traffic may move via the eastern lines to Chicago thence the Chicago, Burlington and Quincy to Sioux City, Iowa, and the Great Northern into Sioux Falls.

Now, as I have explained, this transit privilege embraces substantial origin territory and substantial destination territory, and the only thing which may be described, the only phase of this transit which may be described, as some [fol: 3649] very limited transit privileges on the routes over which the rates apply into Sioux Falls.

Now, the Milwaukee transit tariff on iron and steel, I.C.C. Number B-7656, does not limit the inbound movement to Sioux Falls to shipments coming in over the Milwaukee Road. Shipments could move into Sioux Falls over the routes which I mentioned, that is, the Illinois Central to Sioux Falls or the Chicago, Burlington and Quincy to Sioux City, thence the Great Northern to Sioux Falls. The joint trans-continental rates apply via the routes I have just mentioned, thence the Milwaukee Road from Sioux Falls. The Milwaukee Road authorizes the transit at Sioux Falls. So that in addition to the territory which I have previously mentioned inbound shipments over the Illinois Central to Sioux Falls or the Chicago, Burlington and Quincy to Sioux City, thence the Great Northern to Sioux Falls could be transited to Sioux Falls and thence move out over the Milwaukee Road to destinations on the Milwaukee in the states of Idaho and Washington.

Q. If I might interrupt right there, Mr. Tein. Could a transitor at Sioux Falls fabricating steel tanks in transit

or steel grain bins in transit such as the Sioux Steel Company, under the available transit privileges which you have described, from the origin territory which you have described, under through rates from point of origin through Sioux Falls with transit, ship steel tanks to all destinations. [fol. 3650] in the states of Oregon and Washington on the S. P. and S. system lines and all destinations in the States of Oregon and Washington on the Great Northern, Northern Pacific, and Milwaukee, and also to an additional large destination territory on the Pacific Coast?

A. You included the Northern Pacific in that question. There are no joint rates to destinations on the Northern Pacific with the transit at Sioux Falls.

Q. If my question had eliminated, had not included, destinations on the Northern Pacific in those states, would your answer be yes?

A. Yes.

Q. All right, you may proceed.

A. In addition to the transit which I have already described, Item eleven twenty of the same Milwaukee tariff, that is, I.C.C. Number B-7656, authorizes transit at Sioux Falls on shipments originating east of the Illinois-Indiana state line to destinations in the states of Arizona, California, Idaho, Nevada, New Mexico, Oregon, and Utah. This transit privileges likewise is unrestricted as to the line which must bring the shipment into Sioux Falls, so that shipments in connection with this transit privilege could likewise move into Sioux Falls over the Illinois Central or over the Chicago, Burlington, and Quincy, Sioux City Great Northern route. So that in addition to the destination territory that I have already described the transit would be available to this additional territory comprising the [fol. 3651] states of Arizona, California, Idaho, Nevada, New Mexico, Oregon and Utah.

With this rather broad application it seems difficult that the transit operator, difficult for me to understand how the—

Mr. Maguire (interrupting): Just a moment. I don't think it makes any difference to the Commission what difficulties the witness has in understanding, and I believe

that is the beginning of an argumentative statement. He has stated the facts.

Exam. Dishman: You had asked him a direct question, had you, Mr. Torinus?

By Mr. Torinus:

Q. Well, Mr. Tein, will you proceed with your explanation without an argument and characterize, if you will please, the broad transit application which you were about to describe?

Mr. Maguire: Which he has already described.

Mr. Torinus: I am not sure he has.

A. I believe I have described it fully, but I would like to point out one additional item. The witness in this case testified that the Sioux Steel Company shipped 18 carloads of grain bins to destinations in Idaho, Oregon, and Washington, in the first five months of 1954.

Exam. Dishman: What witness was that?

The Witness: Witness Carr.

Mr. Torinus: S. W. W. Carr.

A. If the transit operator at Sioux Falls had had [fol. 3652] available transit credits representing shipments from the territory east of the Illinois-Indiana state line, which had moved into Sioux Falls over the route of the Illinois Central or over the route of the Chicago, Burlington, Quincy, Sioux City thence Great Northern such transit credits could have been used to 17 of the destinations to which the witness referred, namely, to—correct that—it was in connection with 17 of the carloads, not 17 of the destinations—to which the witness referred, namely, Quincy, Washington, Blackfoot, Idaho, Pocatello, Idaho, Madras, Oregon, Dallas, Oregon, Caldwell, Idaho, Idaho Falls, Idaho, Yakima, Washington, Portland, Oregon, Burley, Idaho, Downey, Idaho, and Spokane, Washington.

By Mr. Torinus:

Q. Now, Mr. Tein, did the witness actually describe in the record any more than 17 carload shipments?

A. No, that was all that I could find reference to.

Q. He specified 18 shipments but you could only find in the record specific reference to 17?

A. Yes, sir.

Q. And those are the 17 to which you have just referred, is that right?

A. Yes, sir.

Q. You may proceed.

A. That is all I have on that.

Q. That is all you have on that?

A. Yes.

[fol. 3653] Q. Now, Mr. Tein, are you prepared to take up Exhibit 117?

A. I am.

Q. Before you discuss Exhibit 117, which has to do with barley, will you tell us, please, to what testimony offered by the complainant this particular exhibit is directed?

A. I cannot recall the witness' name but the company he represented was the Burdick Grain Company, I believe.

Q. This was a witness who testified at the Chicago hearing on behalf of the Burdick Grain Company located at Minneapolis with respect to barley, is that correct?

A. Yes, sir. This deals with barley from S. P. and S. origins to move directly into Shakopee, Minnesota, for malting purposes and transit into the Twin City market. The tariff naming the rates on both barley and malt from S. P. and S. origins to Shakopee, Minnesota, and the Twin Cities, is Agent Prueter's I.C.C. No. 1562. Item 634 of this tariff in connection with barley provides as follows, quotation: "Except where otherwise provided in individual rate items of this tariff when authorized transit privileges and the services are used the rate on the shipment from point of origin to final destination shall not be less than the through rate in effect on date of initial shipment from point of origin to final destination on the commodity shipped into the transit point or on the commodity shipped from the transit point, whichever is higher." It is not otherwise provided in either the item naming the rate on barley or in the [fol. 3654] item naming the rate on malt. The lowest basis of rates on a shipment of barley originating at S. P. and S. stations accorded a malting barley privilege at Shakopee,

Minnesota, and the malt shipped to Minneapolis, Minnesota is a combination of the barley rate from the S. P. and S. origin to Shakopee. That rate is 86 and one-half cents. The rate on malt from Shakopee, Minnesota, to Minneapolis, Minnesota, intrastate rate, is 11 cents, making the total rate 97 and one-half cents. The Milwaukee road does not provide transit at Shakopee when originating at stations on the S. P. and S. for malting barley and the reshipment of that malt to Minneapolis. In the event a route was established from these S. P. and S. origins via the S. P. and S. Spokane, thence Milwaukee road, and in the event the Milwaukee road should establish the transit privilege under the quoted portion of the tariff the rate that would have to be applied to the shipment would be the higher of either the barley rate or the malt rate.

The malt rate from these S. P. and S. origins to the Twin Cities is $1.19 and one-half cents. In other words, the transit, if transit were actually used, then the $1.19 and one-half cent rate would have to be applied, and this rate would result in a charge 22 cents higher than the combination of the barley rate to Shakopee plus the malt rate to Minneapolis, which is the existing basis of rates. Even if the S. P. and S.-Milwaukee route is established it would not afford a [fol. 3655] lower basis of rates than what is in existence today.

Q. Actually if the prayer of the complaint were granted with respect to barley and the Milwaukee accorded the privilege of malting in transit at Shakopee any shipper that availed himself of those through joint rates with transit would pay more than the present sum of the inbound rate on barley to Shakopee plus the malt rate out as it presently implies?

Mr. Maguire: Mr. Examiner, that is what the witness just has said. I don't see why this must be repeated over and over again by counsel.

Exam. Dishman: Is that the situation?

Mr. Maguire: He just said that.

The Witness: It wouldn't be the practical situation, Mr. Maguire, because a transit operator is not required to use transit just because a tariff carries transit, and if a shipper should inadvertently surrender transit tonnage he is not

obligated to apply that. The average transit rule is such that when you surrender tonnage that results in a sum higher than the sum of the local rates, you are entitled to a sum of the local rates. So that the actual result that would obtain would be that the rate would be the same as it is today over the Great Northern or Northern Pacific.

Exam. Dishman: All right, proceed.

By Mr. Torinus:

Q. Does that complete your explanation of Exhibit No. 117?

[fol. 3656] A. Yes, sir.

Q. Mr. Tein, before taking up your next exhibit I would like to direct your attention to testimony in this case by Mr. Engel, I believe it was, with respect to collect telephone calls for purpose of tracing cars. Did you investigate the applicable tariffs with respect to the transcontinental movement of lumber to determine what provisions in those tariffs, if any, governed the practice of the carriers in accepting collect telephone calls for the purpose of tracing cars?

A. Yes, I did.

Q. Will you please tell us the result of your investigation?

A. The tariff from which Mr. Engel read, Agent W. J. Prueter's I.C.C. No. A-3859, this is a tariff containing rules and regulations. Item 80 of the tariff carries the following: "The provisions of this tariff apply on interstate and intrastate traffic at stations as follows: In connection with tariffs making reference to this tariff by I.C.C. or state Commission numbers except as otherwise provided in individual items." There is some more that I do not believe is pertinent to what I intend to point out.

The item from which Mr. Engel read was item 815. The item does not contain any other provisions. Therefore in order to apply that rule the tariff from which the rate is taken must be subject to the tariff by reference to the tariff by I.C.C. or state Commission numbers. The tariff I have naming the lumber rates from the west coast to the river

[fol. 3657] mills is Transcontinental Freight Bureau tariff 28-O, I.C.C. No. 1545, of Agent W. J. Prueter. That tariff does not contain reference to Agent Prueter's I.C.C. A-3859.

Q. Mr. Tein, does the tariff to which Mr. Engel referred have application to the transcontinental movement of lumber?

A. No, sir, it does not.

Q. Is there any tariff which you are able to find which prohibits the acceptance of collect telephone calls for the tracing of cars with respect to the transcontinental movement of lumber?

A. No, sir.

Q. Does that complete your testimony with respect to that subject, Mr. Tein?

A. Yes, sir.

Q. Are you prepared to take up Exhibit 118? Before you discuss Exhibit 118 in detail can you tell us for the record with respect to what testimony of the complainant this exhibit is directed?

A. It is directed to the shipper of sheep from Washtucna, I believe his name was Davin.

Q. The testimony offered by witness Davin with respect to rates on sheep from S. P. and S. origins and also to the testimony of other witnesses with respect to rates on sheep, is that correct?

A. That is correct.

Mr. Maguire: May I ask a question for clarification of this exhibit?

[fol. 3658] Exam. Dishman: Yes.

Mr. Maguire: Is this the number of sheep or the number of cars? The exhibit doesn't state.

The Witness: It is cars.

Mr. Maguire: Thank you.

The Witness: I am sorry.

By Mr. Torinus:

Q. In other words, Mr. Tein, those numbers appearing in the various columns on both pages 1 and 2 of Exhibit 118 refer to numbers of carloads of sheep, is that correct?

Mr. Maguire: To put it more lengthily, yes, I will consent to that.

Mr. Rockwood: That saves time, too, Mr. Maguire.

By Mr. Torinus:

Q. You may proceed, Mr. Tein.

A. Page 1 of the exhibit shows the origin stations and the railroad on which the origin station is located or from which the shipments move, via which the shipments move, to summer range on the Great Northern.

It will be noted that shipments moved from origins on the Northern Pacific, the Union Pacific, the Great Northern, the S. P. and S. and the Milwaukee. The exhibit shows the number of cars to the various summer ranges.

The total of the inbound cars to the summer ranges was 365.

Q. Are those all of the cars to summer ranges on the Great Northern east of Spokane for the year 1954?

A. They are.

[fol. 3659] Q. Mr. Tein, are there joint through rates from origins on the Northern Pacific, Union Pacific, and Milwaukee to Chicago via these summer range points on the Great Northern which would permit a shipper of sheep to avail himself of the transit privilege at those range points and reship to Chicago at a single factor rate from point or origin, as shown in column A on page 1?

A. No, sir.

Q. Are there single factor rates to Chicago via those summer range points from any of the origins shown in column A on page 1?

A. Yes, from the Great Northern and the S. P. and S.

Q. How many cars are represented by shipments from those origins, Mr. Tein, those latter origins?

A. The Great Northern had 32 and the S. P. and S. 40.

Q. You may proceed.

A. Page 2 of the exhibit likewise, figures on page 2 are cars. Page 2 of the exhibit shows the outbound movement from the summer ranges to destination. They are separated by non-transit and transit cars. There were a total of 546 cars which moved from the summer ranges non-transit and a total of 53 cars that moved from the summer ranges with

transit. The transit destination or the destinations in connection with the transit shipments were all Great Northern stations or stations served by the Great Northern. No transit was used to stations on connecting lines of the Great Northern.

[fol. 3660] Q. In the event, Mr. Tein, that the Milwaukee's prayer in this complaint were granted, how many of those destinations on page 2, under the heading "Transit", would joint through rates apply via the Milwaukee from origins on the S. P. and S.?

A. I don't know that. I don't have the individual destinations here. The destinations are in one group east of the Montana-Dakota state line and I couldn't answer that.

Q. I said to how many of those destinations shown on page 2 under the heading "Transit"—oh, I see, you don't have a breakdown of the individual destinations.

A. No, I don't.

Q. To the extent that any of those destinations were local destinations on the Great Northern would such rates apply if the Milwaukee were successful?

A. To local Great Northern destinations?

Q. Yes.

A. No, I don't understand that the Milwaukee is seeking joint rates to local destinations on the Great Northern.

Q. Do you have any further comment to make with respect to Exhibit 118?

A. No, that is all I can think of.

Mr. Torinus: Mr. Rockwood has a question.

Mr. Rockwood: May I ask a question about Exhibit 118?

By Mr. Rockwood:

Q. You heard the testimony of Mr. Davin, did you not?

[fol. 3661] A. Yes, I did.

Q. And he testified generally to the effect that if he shipped sheep from a winter range at Washtucna to the S. P. and S. and stopped along the Milwaukee in the vicinity of St. Maries for summer range and then reshipped his lambs east of Chicago under the present rate adjustment he would have to pay in the neighborhood of $40 a car more

than he would pay if the Milwaukee's prayer in this complaint were granted. Now, the question I want to ask you is, is the situation as he described it, and as I have tried to summarize it, any different from that which the shipper from points on the Northern Pacific faces when he grazes on summer range along the Great Northern?

Mr. Maguire: I object to that question, Mr. Examiner, because it is an attempt to summarize a portion of the record which will speak for itself. The witness can testify as to what situation a Northern Pacific shipper would be under certain conditions, but as to comparing that with Mr. Rockwood's attempted summary of Mr. Davin's testimony, I think the record speaks for itself.

By Mr. Rockwood:

Q. Are you familiar with the rate situation with which Mr. Davin was faced in connection with grazing and transit on the Milwaukee and sheep originating at Washtucna?

A. In a general way, yes.

Q. Are you familiar with the rate situation with which a Northern Pacific shipper at any of these Northern Pacific points listed in your Exhibit 118 is faced if he wishes to summer range at points on the Great Northern in Montana, [fol. 3662] are you familiar with the rate situation?

A. Yes, sir, I am.

Q. Will you tell us briefly, if you can, give us a comparison of the rate situation of the two.

Mr. Maguire: Mr. Examiner, if counsel wishes to bring out a statement from this witness of the rate situation that the Northern Pacific shipper will find himself, I have no objection. But this is a comparison based upon impressions, and I think that the matter can be brought out, and as I say, argued by counsel in brief, without calling for a conclusion of this sort.

By Mr. Rockwood:

Q. What is the rate situation of the two of them?

A. There are no joint rates from origin, joint rates on sheep from origins, on the S. P. and S. to destinations on

the Milwaukee road east of the Missouri River, with routing S. P. and S. Spokane thence Milwaukee road. There are no joint rates from origins on the Northern Pacific in the State of Washington to destinations on the Great Northern or stations on connecting lines east of the Great Northern with routing Northern Pacific to Spokane thence Great Northern or Great Northern and connecting lines.

Q. Could you make a similar comparison of the rate situation with which Mr. Davin is faced and the rate situation with which the shipper from Union Pacific origin [fol. 3663] points is faced if he wishes to summer range along the Great Northern.

Mr. Maguire: The same objection, because, again, counsel got himself onto the rate track at one time and then has gotten back onto the objectionable line of testimony in a comparison between his conclusions as to what Mr. Davin testified to. Now, there is a way for it to be brought out and this is not the way to do.

Exam. Dishman: You asked a direct question about those points?

Mr. Rockwood: I have. Washtucna as testified by Mr. Davin with grazing in transit at a summer range—or grazing rather.

Exam. Dishman: You know those points?

The Witness: Yes.

Exam. Dishman: Can you answer of your own knowledge?

The Witness: A combination rate is assessed when the shipment moves S. P. and S. Spokane thence Milwaukee road to the destinations east of the Missouri River via the Milwaukee road. The combination rates likewise are assessed on a shipment that originates on the Northern Pacific and is grazed at a station on the Great Northern, as an example Blackfoot, Montana, and then goes out from the grazing point over the Great Northern to the territory reached by the Great Northern and connections east of the Great Northern.

By Mr. Rockwood:

Q. I will ask you also with respect to the Union Pacific.

[fol. 3664] A. With the Union Pacific, the shipment mov-

ing via the Union Pacific to Spokane and thence grazing on the Great Northern and thence to Chicago, Illinois, would pay a combination rate.

Mr. Rockwood: That is all.

Mr. Torinus: I have one further question with respect to Exhibit 118.

Exam. Dishman: All right.

By Mr. Torinus:

Q. If the prayer of the complainant were granted, joint through rates were established from origins to the S. P. and S. such as Washtucna, via the Milwaukee Railroad to Chicago, would the shipper on the S. P. and S. at Washtucna, for example, shipping to Chicago have available to him a choice of a greater or less number of routes than a shipper at a local origin on the Northern Pacific or the Great Northern?

A. The shipper on the S. P. and S. would then have available to him three routes at joint rates. The shipper on either the Northern Pacific or the Great Northern would have available to him only one route at joint rates.

Q. So that the S. P. and S. shipper would have an advantage if additional routes may be considered an advantage to a sheep shipper, is that right?

A. That is right.

Q. I have some more questions on another subject, Mr. Tein.

Mr. Maguire: Before you start in, Mr. Examiner, this [fol. 3665] hearing has gone nearly two weeks now and I think all parties would like to finish this by tomorrow evening. I understand that Mr. Torinus is nearly through with Mr. Tein and it is now nearly quarter of five. My cross-examination of Mr. Tein is going to be very brief and I would like to complete it before we adjourn this afternoon.

Exam. Dishman: Do you want that on the record?

Mr. Maguire: I am just making that request. I don't care whether it is on the record or not.

Exam. Dishman: Are there any objections to that?

Mr. Torinus: I don't have any objections to that. We might want a short recess before cross-examination. I can complete my direct and I have no objection to Mr. Maguire going right ahead with his cross.

By Mr. Torinus:

Q. Mr. Tein, over what lines of the Great Northern Railway, and I am speaking now when I refer to the term lines, I am describing lines in two categories, main or branch lines, over what lines of the Great Northern may lumber originating in the States of Oregon and Washington and destined east of the Twin Cities be handled?

A. To the territory between the Twin Cities and Chicago, including Chicago, routing is provided, internal routing is provided, in the tariff via Shelby, Havre, Minot, Devils Lake, Grand Forks, Moorehead, and St. Cloud. That is one route.

Another route is the same to Minot, thence via New Rock-
[fol. 3666] ford, Moorehead and St. Cloud.

And the third route is via Minot, New Rockford, thence Breckenridge, Willmar, Litchfield.

To the territory east of Chicago there are two routes, and they are the two that I named last.

Q. Mr. Tein, do any of these routes embrace movements over branch lines of the Great Northern?

A. They would embrace movement over a branch line only to the extent that a shipment might originate on a branch line, but once the branch line service had been completed to the main line then it is main line service from there on.

Q. You have heard the testimony in this case that Canton, South Dakota, is a point located on a branch line of the Milwaukee and off its main lines, have you heard that, Mr. Tein?

A. Yes, sir.

Q. Can lumber which moves over the lines of the Great Northern from the States of Washington and Oregon be consigned to a point beyond the Great Northern's eastern termination?

A. Not on a joint rate.

Q. Does the Great Northern provide any so-called slow routes for lumber traffic?

A. No, we have no routing other than what I have explained over the direct lines of the Great Northern.

Q. And no slow routes, is that correct?

A. No, sir.

[fol. 3667] Q. Can you explain, Mr. Tein, what you understand is meant by the term transit car in the sense that that term is used with respect to lumber shipments?

Mr. Maguire: Do we have to go through that again, everybody knows that by now?

Exam. Dishman: You understand what is meant, do you not?

The Witness: Yes, sir.

Mr. Torinus: Now, Mr. Examiner, that term has been used loosely throughout this proceeding with respect to several types of lumber shipments, and I want to ask Mr. Tein a few questions about transit car, in other words, I would like to have the term defined for purposes of his discussion.

Mr. Maguire: I think this is just simply and completely unnecessary padding of the record.

Exam. Dishman: There is a lot in the record on that, ever since the first Portland hearing, but can you do it briefly?

The Witness: Yes, sir.

A. A transit car is a car shipped from an origin for the specific purpose of being sold while it is in transit.

By Mr. Torinus:

Q. Not necessarily a route moving over a slow route or a circuitous route according to your definition, is that right?

A. That is correct.

Q. Are there diversion points on the Great Northern which may be utilized by shippers of transit cars, as you [fol. 3668] have defined transit cars on lumber originating in the Pacific Northwest?

A. Yes.

Q. And are such points utilized?

A. Yes.

Q. Where are they located?

A. They are located along the main line.

Q. Can you give us an example of one or two such points?

A. Yes, Minnesota Transfer, Minnesota, located at the Great Northern's eastern terminus, and then Willmar, Minnesota, on the route via Minot, Breckenridge, Willmar.

Q. Has the Great Northern traffic department, Mr. Tein, solicited transit car shipments?

A. Yes, we solicit transit cars along with the firm orders.

Q. Are those cars, transit cars, given any different service on the Great Northern than firm order cars?

A. No, sir.

Q. Why not, Mr. Tein?

A. The management of the Great Northern feels that—

Mr. Maguire (interrupting): Just a moment. It is not an issue in this case and there has been nothing but insinuations which have been cast by counsel that there has been any slow service given cars by any of the parties, of the railroads who are participating in this case. I submit that counsel is just putting up a straw man to knock over by asking these questions and there is no relevance whatever to it.

[fol. 3669] Exam. Dishman: What is the relevancy?

Mr. Torinus: I want to show what the Great Northern's service is with respect to transit car shipments.

Exam. Dishman: Can you ask a direct question without argument? Now, he started out there with management feels something.

Mr. Torinus: Well, I won't press that question.

Exam. Dishman: All right.

Mr. Torinus: I have, however, one or two other questions with respect to these cars.

By Mr. Torinus:

Q. If a transit car moving over the Great Northern reaches diversion point such as Willmar in Minnesota, Minnesota Transfer, or some other diversion point and is not sold at the time of arrival, will such car be held at the diversion point until disposition is made?

A. Yes, it is held, but it is, of course, subject to the established demurrage provisions.

Q. That is, the demurrage tariff and the charges under the tariff which would apply as well to firm order cars should they be held, is that correct?

A. That is right.

Q. Have there been, in the relatively recent past, Mr. Tein, some service orders with respect to the holding of those cars for an indefinite length of time at a diversion point?

Mr. Maguire: Just a moment. The service orders will speak for themselves. I object to this witness talking about [fol. 3670] the contents of service orders.

Mr. Torinus: I would just like to have them identified and then if we may refer to them in the—

Exam. Dishman (interrupting): Have there been service orders?

The Witness: There have been.

By Mr. Torinus:

Q. Can you give us the numbers of those service orders?

Mr. Maguire: Mr. Examiner, the point of my objection is that I am objecting to this witness being asked to give the contents of service orders. The best evidence of the contents of the service orders are the service orders themselves.

Exam. Dishman: You are not asking for the contents?

Mr. Torinus: No, I haven't asked for the contents.

Mr. Maguire: If he has just asked for the numbers of the service orders the numbers don't mean anything.

Mr. Torinus: I have asked for the numbers so we can refer to them so they can speak for themselves but they can't speak for themselves in the record unless we have the numbers.

Mr. Maguire: I will not stipulate.

Mr. Torinus: I didn't ask you to stipulate, I am asking him a question.

Mr. Maguire: Just a moment. Now, the mere mention of service orders without the service orders themselves being incorporated in the record, either by reference, either by

stipulation or by order, has no bearing whatever on the case, is of no help.

[fol. 3671] Exam. Dishman: You are not prepared to offer those in evidence, are you? Evidently Mr. Maguire won't stipulate.

Mr. Torinus: I had intended to ask Mr. Tein what the applicable service orders were, and I thought, if he were permitted to state the numbers of the service orders, we might refer to them and their contents the same as the tariff. If Mr. Maguire objects to that I will have the service orders read in evidence.

Mr. Maguire: I certainly do object to the incorporation of service orders either in their very full wording or otherwise, because this is completely a side issue in this case and has nothing whatever to do with the merits. There, after all, should be a limit to the patience with which we should sit and listen to testimony here which covers so many fields which are not relevant to this case, and that's just one point beyond which I am not going to go.

Mr. Torinus: Is there a question pending?

Exam. Dishman: You asked him about if there had been service orders and he said yes.

By Mr. Torinus:

Q. Now will you give us the numbers of those service orders, please.

Exam. Dishman: Well, there are objections to that.

Mr. Maguire: I repeat my objections.

Exam. Dishman: There are objections to that, and I don't see what good it would do unless it would become a part of the record, and then you would have to show [fol. 3672] the relevancy as to that. So just what do you want to pursue along that line, Mr. Torinus? Just merely stating the numbers, I don't see that that would amount to anything.

Mr. Torinus: I have had, Mr. Examiner, Mr. Tein explain the service which is rendered with respect to carload shipments of lumber, both firm cars and transit.

Exam. Dishman: Yes, he has done that and he says there have been service orders.

Mr. Torinus: And he said when they reach a diversion point they are held subject to the regular demurrage rules and charges. He said that there had been service orders which have a bearing upon the holding of those cars at diversion points. Now, I think to make the record complete, and that is all I have, he should be permitted to give the numbers of the service orders so we may refer to them.

Exam. Dishman: Well, they are not in the record, Mr. Torinus. Do you have them here to offer in evidence?

By Mr. Torinus:

Q. Mr. Tein, do you have a copy of any of the applicable service orders?

A. I can't say whether or not it is a complete copy.

Q. Let me ask you this—let me see what you have.

Exam. Dishman: Let's take a short recess now.

(Short recess.)

Exam. Dishman: The hearing will be resumed, gentlemen.

By Mr. Torinus:

Q. Mr. Tein, does the transcontinental east lumber tariff [fol. 3673] No. 28 series to which you referred in your testimony make reference to the so-called service order tariff?

A. It does.

Mr. Torinus: I have no further questions. You may cross-examine.

Mr. Maguire: Are you all through?

Exam. Dishman: He says are you through. You have tendered the witness for cross-examination?

Mr. Torinus: I have offered the witness for cross-examination.

Just one question before you start, Tom.

By Mr. Torinus:

Q. Can you identify that tariff service order, I.C.C. number, that I just asked about?

A. Service order tariff No. 1-B, Agent L.E. Kipps, I.C.C. No. A-3889.

Mr. Torinus: Thank you.

Mr. Maguire: It is understood, Mr. Examiner, that the mere reference to a service order or a service order tariff does not incorporate it in this record by reference, however.

Exam. Dishman: He has referred to it on the record.

Mr. Maguire: Just referred to, but not incorporated by reference.

Cross-examination.

By Mr. Maguire:

Q. Mr. Tein, for convenience may we refer to pages of your prepared testimony to direct your attention to?

A. Oh, yes.

[fol. 3674] Q. Will you turn to page 15 where mention is made of the rates which were charged on material and supplies used in construction of the Portland and Seattle Railway as the S. P. and S. was called at that time. Were those rates on material and supplies upon the same level as rates available to the general public on the same items?

A. Yes. This was a small one sheet tariff which merely made the applicable rates that were then in effect over routes of the Northern Pacific to also apply over the additional routes specified in the small tariff.

Q. Yes, and the rates in the Northern Pacific tariff were commercial rates, were they not?

A. Yes, sir.

Q. Now I would like to refer to page 21 of your prepared testimony where you mention the many separate small railroads in the territory north of Portland which have since become part of a transcontinental line. Now, all of the railroads, the small railroads, which you mentioned in your entire testimony were acquired solely by a single transcontinental line in each case, isn't that true? What I am getting at is this, Mr. Tein, in none of the cases which you mentioned was there a case of an equal ownership of any of these previously indicated railroads by two transcontinental railroads as is the case with the S. P. and S.?

A. No, sir.

[fol. 3675] Q. And also there is an exception, is there not, as to the general rule of cancelling out rates, through rates, which had previously been in existence via the small railroad and railroads other than the new owner, in the case of the Pacific Coast Railroad the entire capital stock of which is now owned by the Great Northern?

A. That is correct.

Q. And in the case of the acquisition of the Pacific Coast Railroad, which is within the past five or six years, conditions were laid down by the Commission which forbade the Great Northern to cancel out such rates as had theretofore existed?

Mr. Torinus: I object to that question. The conditions laid down by the Commission are all set forth in the Commission's decision and order and will speak for themselves.

Exam. Dishman: In what decision are you referring to?

Mr. Maguire: I do not have the docket handy here, it is in the matter of the acquisition of the Pacific Coast Railroad Company. I do not have the docket number at the present time.

I might comment upon that, Mr. Examiner, that this witness has commented upon other decisions of the Commission, and his statement is full of references to decisions of the Commission as to what was held.

Exam. Dishman: If we had the reference to the decision.

Mr. Torinus: I will be glad to supply it, Mr. Examiner.

Do you have it Mr. Tein?

[fol. 3676] The Witness: Yes.

Mr. Torinus: Will you supply it for the record.

The Witness: It is Finance Docket 17134, Pacific Coast Railroad, Control 282 I.C.C. 600.

By Mr. Maguire:

Q. In that case, as a result of the conditions laid down by the Interstate Commerce Commission in that docket, the Great Northern did not and will not cancel any joint through rates which had hitherto been in existence as between the Pacific Coast and other carriers connecting with the Pacific Coast, isn't that true?

A. It is true to this extent, Mr. Maguire, that the Great Northern did not cancel the rates, but I can't go along and say that if and when the time should come that the Great Northern decides to try it that we are precluded forever and a day from attempting to cancel those rates.

Q. It was one of the conditions of your acquisition, however, that you not cancel those rates, wasn't it?

Exam. Dishman: That decision will speak for itself, won't it? That is a part of the decision that you are referring to?

Mr. Maguire: Yes.

Exam. Dishman: I say that will speak for itself.

Mr. Maguire: If the witness wants to leave it that way, I am perfectly willing. I will refer to the decision in my brief.

[fol. 3677] Exam. Dishman: All right.

By Mr. Maguire:

Q. If you would refer to page 32 of your prepared testimony, in your discussion of the transit privileges involved in I. and S. Docket No. 852—no, I will withdraw that question.

Now, will you turn to exhibit 110. In order to clarify it the meaning of the heavy black line which zigzags down through the center of the map which you inserted, could you furnish me the transcontinental groups, that is, the designations of the transcontinental groups that abut upon the westerly—upon that line from the west?

A. From the west?

Q. Yes. Could I, without abandoning that question, could I ask you this one as a preliminary one, this line does not bisect any of the continental groups or sub-groups, does it?

A. No. As I recall—I drew that line myself so I have some idea what I tried to do.

Q. Yes.

A. And it eliminates group J, group I, and group N. Those would be the three groups which border to the west of that line.

Q. Thank you. Without waiving my objection to the testimony in connection with Exhibits 112, 113, I would like to ask a couple of questions about the general make-up of those exhibits. Look at page 2 of Exhibit 112 first, column 7.

A. Yes, sir.

[fol. 3578] Q. There are shipments which originate upon the Milwaukee, is the destination east of Chicago on shipments from those mills limited to the across lake route?

A. No, sir, they are not.

Q. So that heading is incorrect as to that particular page, is it not?

A. No. What I attempted to do here, Mr. Maguire, was to show in connection with the other railroads the same application as existed from connecting lines of your railroad to that territory. In other words, I understand, or I think I understand that from your own origins you have wide open routing to the same extent that the Great Northern has from its origins but from S. P. and S. origins and Oregon Trunk and Oregon Electric they are confined to your local stations, and in connection with the Union Pacific and Southern Pacific origins those routes are restricted to across lake routes.

Q. Yes.

A. Now, that is the picture that I have tried to set up there. I didn't mean to infer that you did not have rates from your own origins to all the territories of Chicago via all rail routes.

Q. Thank you. Now you heard Mr. Ehlen's testimony, did you not, as to the transit available west of Marengo on shipmenfs originating on the Union Pacific or Southern Pacific to Marengo thence Spokane. The only transit available so far as the Union Pacific and Southern Pacific haul was concerned was some limited privileges with regard [fol. 3679] to puting poles, ties, and so forth to creosoting plants.

A. I heard his testimony.

Q. Yes. With that in mind and with it also in mind that no other transit privileges are available would you call that a fully competitive route with one where all transit privileges are available?

A. No, it would not be competitive to the extent that the transit would not be available, but I think this is a very fair statement, Mr. Maguire, that transit is not used to quite the extent that it has been indicated in this case that it is used.

Q. In other words, the lack of transit in your opinion, is less of a disadvantage than some people have said?

A. Well, I can't help but feel that way. I have made a study of what happened on our railroad.

Q. I know, you have explained that, I got your viewpoint on it.

Now let's turn over to your Exhibit 113. That supplement of Crow's, the supplement to the Eleventh Edition, of March 1954, does it have anything to do or does it give any information on Douglas fir mills west of the Cascades in Washington? I wasn't able to find it there. Could you point it out to me where that is found?

A. Here is the way this works—

Mr. Torinus (interrupting): Mr. Tein, if you are pointing it out may that be shown on the record.

[fol. 3680] Mr. Maguire: Mr. Tein is pointing out to me where the fir manufacturers are shown.

Mr. Torinus: Does that satisfy you, Mr. Maguire?

Mr. Maguire: That satisfies me for the moment, yes.

Mr. Torinus: Thank you.

Mr. Maguire: Thank you, Mr. Tein.

By Mr. Maguire:

Q. You, of course, did not make any investigation as to the correctness of the figures shown in the Crow's Guide, did you?

A. No, sir, I did not.

Q. The Crow's Guide does not make any distinction between mills which are so-called tide water or export mills and mills which ship by rail to transcontinental and intermountain destinations, does it?

A. No, sir.

Q. Well, you might know about it but I doubt it, do you know as a matter of fact that the Etonville Lumber Com-

pany has been closed down, closed down its operations entirely about a year ago?

A. No, sir, I didn't know that.

Q. Which is one of the larger lumber companies mentioned in your exhibit?

A. No, I didn't know that.

Mr. Rockwood: Where are they located?

Mr. Maguire: That is not evidence that they did. We [fol. 3681] will cover that later.

By Mr. Maguire:

Q. So that in making up your figures here you assumed, however, that all of the footage which is rated in the Crow's Guide as the output of any mills, that all of that footage of lumber is available for shipment by rail, didn't you?

A. Yes, sir.

Q. Now, let's look at your Exhibit No. 116 just for a minute. That has to do with illustrations of the so-called cross over routes insofar as they are applicable to destinations upon the Great Northern, and you stated, for example, that you could not partially unload at some station, I have forgotten the name, in the red colored area on your map, and complete delivery at Grand Forks, which is in the yellow area covered on your map. That was right, wasn't it?

A. Yes, sir.

Q. But, however, it is possible under the tariffs for partial unloading to be made, for example, at Williston, which is in the red area, and completion of unloading at Minot, which is in the red area, isn't it?

A. Correct.

Q. It is only where you get over into the other colored areas that you cannot do that?

A. Yes, sir.

Q. And it is also possible for a shipper to start a car of lumber out on the Milwaukee, say it originated at Port [fol. 3682] Angeles and it moves Milwaukee and is diverted before it reaches Butte to some point in the red area covered on your map. That could happen, couldn't it?

A. Yes.

Q. They could be sent out as a transit car and diverted and sold in transit before it reached Butte, which is a junction point, and diverted to a point in the red area on the Great Northern?

A. Yes.

Q. Even though it originated on the Milwaukee?

A. Yes.

Q. Then, of course, that would exhaust your diversions, wouldn't it, if that were done?

A. Yes.

Q. And also you could divert it if it were originally consigned from a Milwaukee origin via Butte to Williston, it could be diverted in transit to Casselton, North Dakota, which is still in the red area, couldn't it?

A. Yes, sir.

Q. When you were talking about lumber shipments and the question of routing of transit cars, as you defined them, you stated that in no case are these cars routed over branch lines of the Great Northern, is that right?

A. That is correct.

Q. And so therefore you call your line down through—your three routes, all of them are main lines?

[fol. 3683] A. Yes, sir.

Q. No one of them is on your transcontinental business, your more heavily used line?

A. Yes, sir.

Q. And also mention was made by Mr. Torinus of Canton being on a branch line of the Milwaukee, do you recall that mention?

A. Yes, sir.

Q. Is Canton actually on a branch line of the Milwaukee or is it on a main line which is not the most heavily used line?

A. Well, it is what I would call a junction point on the line that extends out from Sioux Falls Junction to Sioux City and where the line crosses from, oh, Milwaukee, which is on the east and out to Rapid City to the west.

Q. Well, is it a branch line or a main line? Can you tell by looking at that map?

A. No.

Q. And can you tell by looking at that map whether Canton is on any different character of line than the three lines of the Great Northern which you have described?

A. Well, I don't know where your service is, Mr. Maguire, but if that—

Q. (Interrupting) Just a moment. You don't know where our main service is?

A. No, sir.

Q. I am asking whether you know anything about the [fol. 3684] line that runs through Canton, whether it is a branch line or a main line, regardless of whether it is as heavily travelled as other routes.

A. No, sir, I don't know.

Q. Thank you. Now, we have just one more question which has to do with our favorite subject, sheep.

You made some comparison between the position of a shipper of sheep from a point on the S. P. and S. if the Milwaukee route were thrown open to him with the position of a shipper of sheep from a point on either the Northern Pacific or Great Northern west of Spokane, and your conclusion was that he would have a three-to-one choice of routes, wasn't that it?

A. Yes, sir.

Q. And right now a shipper on the S. P. and S. has a two-to-one choice of routes over a shipper on the Great Northern or the Northern Pacific, doesn't he?

A. Yes, sir.

Q. So the advantage is a matter of degree?

A. That would be right.

Q. With regard to transit privileges in general on lumber and forest products, I think you stated as your opinion that it was not a very important consideration.

A. No, I don't believe I stated it was not very important. I said I don't believe it is used to quite the extent that it has been indicated in this case, or at least the impression that I have had from the testimony that I have heard in this case.

[fol. 3685] Q. But when a shipper wants it, it is important to that shipper, isn't it?

A. Obviously when a shipper wants something it is very important to him.

Q. And you, in your prepared testimony, discussed quite at length the difficulties in connection with transit at Albeini Falls, do you remember that?

A. Yes, sir.

Q. And that was a very large shipper who was involved in that transaction, was it not?

A. Yes, I would call that a large shipper.

Q. And that was a very important transaction in more ways than one, which we will not go into at this time, wasn't it?

A. All right.

Q. Do you agree with that?

A. Yes, I do.

Mr. Maguire: That is all. Thank you very much, Mr. Tein.

Exam. Dishman: Does that conclude the cross-examination?

Mr. Cockrum: I have one or two questions, Mr. Examiner.

Exam. Dishman: All right.

Cross examination.

By Mr. Cockrum:

Q. In your Exhibit 116, Mr. Tein, you spoke pretty much at length with regard to pockets that the shippers get into. Were those pockets on the Great Northern that the shippers get into?

[fol. 3686] A. You will find them on almost any railroad.

Q. In your judgment do those pockets, so-called, operate to the advantage or disadvantage of the shippers that get into them?

A. I don't think it operates to any disadvantage to any shipper.

Q. Is that your full answer? Is it?

A. Yes, sir.

Q. On page 14 of your prepared statement you make a statement that the Great Northern has not generally

permitted the S. P. and S. and its branch lines to join in new through routes and joint rates in which the Great Northern was not willing to join. I take it from that statement that the S. P. and S. has joined in the through routes and joint rates in which the Great Northern has not joined.

A. May I have it repeated?

(Question read.)

A. No.

Q. Then the statement which you made is not entirely correct, is it, that the Great Northern has not generally permitted the S. P. and S. and its system lines to join in through routes and joint rates in which the Great Northern was not willing to join? In other words, has the S. P. and S. and its system lines joined into some through routes and joint rates in which the Great Northern was not willing to join?

A. No, none that I know of.

Exam. Dishman: Well, you are questioning him as to [fol. 3687] the use of the word "generally"?

Mr. Cockrum: That is right.

Exam. Dishman: Your statement, then, you eliminate the word generally in that remark?

The Witness: I say I don't know of any.

Mr. Cockrum: That is all.

Exam. Dishman: Do you have anything on redirect?

OFFERS IN EVIDENCE

Mr. Torinus: At this time I would like to offer in evidence Exhibits 110 to 118, inclusive.

Exam. Dishman: Do you have any objections other than the ones you have stated?

Mr. Maguire: Only Exhibits 112 and 113 for the reasons stated.

Exam. Dishman: The exhibits will be received in evidence and your statements as to those exhibits, Mr. Maguire, will be considered when the weight the Commission gives these Exhibits is determined.

(Defendant's Exhibits Nos. 110 through 118, inclusive, Witness Tein, were received in evidence.)

Exam. Dishman: Off the record.

(Discussion off the record.)

Exam. Dishman: On the record. The witness is excused.

(Witness excused.)

Exam. Dishman: We will recess until 9:30 tomorrow morning.

(Whereupon, at 5:45 p.m., an adjournment was taken until 9:30 a.m., Friday, April 15, 1955.)

[fol. 3690]

Transcript of Proceedings—April 15, 1955

Exam. Dishman: The hearing will come to order, gentlemen.

Mr. Golden: Mr. Examiner, the next witness will be Mr. W. A. Hart.

He has a prepared statement. Before he starts to read it I would like to have identified for the record four exhibits.

Exam. Dishman: Are they in order?

Mr. Golden: Yes, they are.

Exam. Dishman: The first will be 119.

Which one is that?

Mr. Golden: That is the list of stations on the Northern Pacific.

The next exhibit is statement of mileages.

Exam. Dishman: That will be Exhibit 120.

Mr. Golden: The next is a railroad map which shows the States of Minnesota, North Dakota and South Dakota.

Exam. Dishman: That will be Exhibit No. 121.

Mr. Golden: And the next is a statement of the routes in connection with specific single factor through rates on Hogs from Sioux Falls, South Dakota, to Portland, Oregon.

Exam. Dishman: That will be Exhibit No. 122.

(Defendant's Exhibit Nos. 119, 120, 121, 122, Witness Hart, were marked for identification.)

W. A. HART was sworn and testified as follows:

[fol. 3691] Direct examination.

By Mr. Golden:

Q. Would you read your statement, please, Mr. Hart?

A. My name is W. A. Hart. I live in St. Paul, Minnesota, and am employed in the General Offices of the Northern Pacific Railway Company as Assistant General Freight Agent in charge of commerce work, a position I have held for 12 years.

My employment in the Freight Traffic Department of the Northern Pacific extends over a period of 45 years. During that time my experience has involved the application of tariffs and the determination of rates and has included preparation of testimony for and appearances in numerous proceedings involving freight rates and charges before the Interstate Commerce Commission and state regulatory bodies. At the present time my principal duties are the preparation and presentation of testimony of such character.

I am generally familiar with the rates and routes in which the Northern Pacific participates in the handling of freight traffic to and from the Pacific Northwest, including the territories served by the Spokane, Portland and Seattle Railway Company and its subsidiaries, the Oregon Electric and Oregon Trunk.

The Northern Pacific Railway was the first trans-continental line to reach the North Coast territory. The construction of its line from its eastern termini to Wallula was completed in August 1883. The line between Tacoma [fol. 3692] and Portland was completed and placed in operation in 1883, and the line between Seattle and Tacoma in 1884.

In April, 1881, the line of the Oregon Railroad and Navigation Company had been completed from the west into Wallula and continuous service between Portland,

Oregon, and Wallula, Washington, was inaugurated by that line in November, 1882.

In the fall of the year 1883, the Northern Pacific and the OR&N established joint through service via the Wallula Gateway on trans-continental traffic to and from Portland and points taking Portland rates, also, to and from Tacoma, Washington, by means of the railroad constructed by the Northern Pacific from Portland to Goble, Oregon, 40 miles north of Portland thence ferry across the Columbia River to Kalama, Washington. That service to Tacoma continued until July, 1887, when the Northern Pacific completed construction of its line from Pasco over the Cascade Mountains direct to Tacoma.

The OR&N did not build into Huntington, Oregon, until November, 1884, a year after the joint service had been established via Northern Pacific and OR&N via Wallula. Accordingly the trans-continental route in which the OR&N participates with the Northern Pacific was in existence before establishment of the trans-continental route of the OR&N through Huntington, Oregon, in connection with the Oregon Short Line and the Union Pacific.

During the years 1882 to 1889, the two lines, Northern Pacific and OR&N were jointly owned and controlled by [fol. 3693] the Oregon Trans-Continental Company.

Beginning with the year 1883 and since that time the Northern Pacific has had a system of railroad built for the handling of trans-continental traffic between its eastern termini at St. Paul and Duluth, Minnesota, and Ashland, Wisconsin, on the East and Pacific Coast terminals on Puget Sound and the Columbia River on the west.

In the year 1901 the Northern Pacific and Great Northern jointly acquired a controlling interest in the Chicago, Burlington and Quincy and commencing with that date a joint traffic arrangement was entered into between the Northern Pacific and Burlington for the handling of traffic via its Laurel, Montana, gateway between the Pacific Northwest and a territory which may be described generally as the central west and southwest states, generally west of the Mississippi River.

Between its eastern termini and Laurel, Montana on the one hand and its western termini on the other hand

the Northern Pacific serves many stations which are common points served also by other railroads. In many instances there are track connections and facilities for the interchange of carload freight between the Northern Pacific and such other railroads. Notwithstanding these numerous interchange points, it is the general policy of the Northern Pacific to retain its long haul on both the eastbound traffic and westbound traffic which it originates or terminates at its stations in the Pacific Northwest to the [fol. 3694] fullest extent possible wherever such retention is consistent with the Northern Pacific participating in the available traffic.

This policy is likewise followed by other major trans-continental lines serving the Pacific Northwest. These lines by tariff provision specifically restrict the joint rates on trans-continental traffic so as to generally apply only via specified eastern interchange points which afford the particular trans-continental line serving the point of origin or destination in the Pacific Northwest its long haul west of such points of interchange.

Exhibit 119 is a map of the Northern Pacific system west of the Montana-North Dakota State Line on which there has been blocked out interchange points between the Northern Pacific and other railroads participating in routes on trans-continental traffic. It will be noted from this exhibit that the Northern Pacific has many connections with the Great Northern in Oregon, Washington, Idaho and Montana. Even so, the general practice has been for the Northern Pacific to retain the long haul on trans-continental traffic which it originates or terminates in the Pacific Northwest and not to participate with the Great Northern in joint rates on such traffic via any of these junctions.

I might state that Exhibit No. 119 showing the list of these various stations was taken from the Railway Equipment Register and is now shown in Railway Equipment [fol. 3695] Register I.C.C. 315, Agent M. A. S-e-n-o-b-i-a. That is the April 1955 issue, and also taken from our distance table, which within the last four months had been fully checked, and the reason the check was brought about was on account of the Interstate Commerce Commission calling our attention to some of the discrepancies between

the interchange points published in our distance table as compared with that shown in the Railway Equipment Register.

Mr. Maguire: Could I ask a question for clarification?

Exam. Dishman: Yes.

The Witness: Yes.

Mr. Maguire: When you make that statement, Mr. Hart, do you mean the attached list, the list which is attached to Exhibit 119?

The Witness: That is right.

Mr. Maguire: Thank you.

A. (Continuing) The Great Northern does not generally participate with the Northern Pacific in competitive joint rates via said junctions on trans-continental traffic it originates or terminates in the Pacific Northwest.

The Northern Pacific connects directly with the Milwaukee Railroad at numerous western junctions in the states of Washington, Idaho and Montana. The general practice has been for the Northern Pacific to retain its long haul on the trans-continental traffic it originates or terminates in the Pacific Northwest and not to participate in joint rates with the Milwaukee via any of these junctions [fol. 3696] except to a limited extent on lumber as will be explained later.

I might say there that on fruits and vegetables we do have stations on the Northern Pacific via Spokane in connection with the Milwaukee.

The Milwaukee follows a similar practice of retaining its long haul and does not generally join the Northern Pacific in joint rates via said junctions on trans-continental traffic originated or terminated by the Milwaukee in the Pacific Northwest.

Establishment of the joint rates with the Burlington via the Laurel route which I have already mentioned has resulted in the Burlington participating in traffic to and from stations on the Northern Pacific in the Pacific Northwest. It has also permitted the Northern Pacific to reach via the direct route of the Burlington, the Southwestern territory competitive with the Union Pacific which could

otherwise be reached via the Northern Pacific only through the Twin Cities Gateway.

On lumber, the Laurel route does not apply to stations on the Burlington or its connections Galesburg, Illinois, and east, which would include Peoria and Chicago, Illinois, and points east thereof. In other words, the Northern Pacific does not give the Burlington at Laurel lumber for Galesburg, Peoria, Chicago or points east thereof but restricts such traffic to the Burlington at the Twin Cities.

Since the SP&S and Oregon Trunk were built and since [fol. 3697] the acquisition of the Oregon Electric, the Northern Pacific in publishing rates has treated these lines as part of its railroad in the matter of through routes and joint rates on trans-continental traffic.

Since it is the policy of the Northern Pacific to retain its maximum haul on trans-continental traffic it has refused to authorize the SP&S, Oregon Electric or Oregon Trunk to join the Milwaukee Road, or any other road, except the Great Northern, in through routes and joint rates via interchange points which short haul the Northern Pacific or do not give the Northern Pacific any haul whatever.

Joint rates on forest products originating on the Northern Pacific in the states of Oregon and Washington to destinations on the Milwaukee east of the Missouri River have their basis in the construction of the Milwaukee's Puget Sound extension west of Mobridge. Previously such joint rates were applicable only via eastern junctions of the Northern Pacific with the Milwaukee at the Twin Cities and Linton, Edgeley, Wahpeton and Fargo, North Dakota, as published in TCFB Tariff Nos. SR-1012 and SR 1000, Agent R. H. Countiss' ICC Nos. 951 and 913, respectively.

On December 31, 1912, routing in connection with these rates to all Milwaukee destinations in Minnesota, Iowa, Missouri, Wisconsin, Michigan and Illinois via the eastern interchange points named above was cancelled and new [fol. 3698] routes were established via Seattle, Tacoma and Spokane, Washington, thence Milwaukee to destinations on its line as published in TCFB Tariff No. SR-1019, Agent R. H. Countiss' ICC No. 959.

Similarly routing to Milwaukee stations east of Missouri River in the states of North Dakota, South Dakota and

Nebraska was changed effective April 30, 1913, in TCFB Tariff No. 18-A, Agent R. H. Countiss' ICC No. 969, so as to apply only via the western junctions mentioned above. This routing was later confined generally to Milwaukee local stations in the territory covered by Agent R. H. Countiss' ICC No. 959 published effective August 28, 1913, in Supplement 19.

The following is a statement of the historical background of the existing joint rates between the Northern Pacific and other lines via western junctions.

By Mr. Golden:

Q. May I interrupt there a moment, Mr. Hart. By other lines do you mean other than the Northern Pacific or other than the Milwaukee or both? What do you mean by "other lines"?

A. I mean this: we have western junction routing in connection with the Canadian Pacific, Southern Pacific, and Union Pacific, and that is what I am going to deal with now.

Q. All right.

A. I should like to discuss first the Wallula junction with the Union Pacific. In January, 1889, the track and equipment of the OR&N was leased to the Oregon Short Line [fol. 3699] Railroad. The through routes originally established when the Northern Pacific and OR&N were under common management were continued after this leasing arrangement and are still in effect.

In 1898, the Northern Pacific and the Oregon Short Line established joint lumber rates from the territory north of Portland to points on the Oregon Short Line and connections west of the Missouri River via Northern Pacific-Silver Bow, Montana, thence OSL and connections. In 1910, the OR&N operation was extended north of Portland, Oregon, to the Puget Sound area which then gave that line direct access to the origin territory Seattle and south.

Prior to October 11, 1915, the rates on lumber from the district north of Portland to and including Seattle, to points on the Oregon Short Line via OWR&N or via the

Northern Pacific through the Silver Bow Gateway to OSL points east of Pocatello on the line to Salt Lake City, rates were 2½ cents higher than from Portland. Effective that date these rates were reduced to the Portland basis via the OWR&N but not via the Northern Pacific. The action on the part of the OWR&N, as to the rates via the Portland Gateway, placed them on a 2½ cents per 100 pounds lower basis than from competitive points on the Northern Pacific via the Silver Bow Gateway.

This reduction in rates via the Portland Gateway enabled the OWR&N to scalp our local territory north of Seattle for a distance of 100 miles, to Salt Lake City, for [fol. 3700] example. In 1916 the Northern Pacific requested the OWR&N to make a corresponding adjustment in its rates from points of origin south of Seattle, but they refused. Subsequently, however, the Union Pacific agreed to reduce the rates in connection with the Northern Pacific to the same basis as in effect via their line direct, with the understanding that such rates would also apply via the Wallula Gateway. This was accomplished May 15, 1919.

The lumber rates via the Wallula Gateway apply only to stations on the Union Pacific and are not applicable to points on connecting lines of the Union Pacific. The rates via the Silver Bow Gateway do not apply east of the Missouri River.

The Northern Pacific has also joined in rates via western junctions in connection with the Canadian Pacific.

The present line of the Northern Pacific from Seattle to Sumas was originally the Seattle and International Railway. The Northern Pacific acquired this property on March 21, 1901. Prior to that time, and as far back as November 6, 1896, the Canadian Pacific had a contract with the Seattle and International for the handling of freight between Seattle and Vancouver, B.C. On May 27, 1901, the Canadian Pacific and the Northern Pacific entered into an agreement for joint rates and routing via Sumas which gave the Canadian Pacific rates to Seattle and intermediate points. It also gave the Northern Pacific rates to Vancouver, New Westminster, B.C., and intermediate points. Vancouver and New Westminster are also reached by the Great Northern.

[fol. 3701] The agreement in 1901 between the Canadian Pacific and Northern Pacific to interchange traffic at Sumas was a reciprocal arrangement. This agreement was broadened on June 1, 1912, to give the Canadian Pacific access to Tacoma, Washington, and in turn the Northern Pacific access to Victoria, B.C. The mutual interest of both the Canadian Pacific and the Northern Pacific are served by this arrangement.

The arrangement for routing via Spokane, Spokane and International Railway and Canadian Pacific Railway being of a later origin was a duplication of a previously existing adjustment of rates and routing existing between Canadian Pacific, Spokane and International and the Union Pacific.

Another western junction route which was established to meet a competitive situation is that from stations Seattle and south to Willbridge via Portland and Southern Pacific, which was published to place the Northern Pacific on a competitive basis with the existing Union Pacific-Southern Pacific route.

Eastbound routing through Portland from stations north of Seattle to and including South Bellingham is restricted to hops and to canned or preserved foodstuffs stopped in transit at stations in California. The eastbound routing via Portland from stations east of Auburn to and including Spokane is limited to apples destined stations on the T&NO and the T&P and to vegetables to destinations on the T&NO.

The westbound routing in connection with the Southern [fol. 3702] Pacific, Portland and Northern Pacific is limited to grain from Trans-Continental Groups F, F1, G, I or J, published at the request of shippers who wished to transit at points in California, and to cotton seed oil from points in Texas on the T&NO and the T&P, when stopped for refining, et cetera, in transit at El Paso or at points in Arizona, California or New Mexico.

Thus it will be seen that the Northern Pacific's policy, as well as that of other trans-continental carriers reaching the Pacific Northwest, is to retain its full maximum haul in all cases where such retention permits participation in the available trans-continental traffic.

From the beginning it has been the policy of the Northern Pacific to include the SP&S System Lines in its trans-continental rates and routes as will be seen from the following discussion.

Joint rates on trans-continental traffic between eastern territory and stations on the SP&S which are common with the Northern Pacific, such as Portland and Vancouver, Washington, generally apply over through routes via the Twin Cities or Laurel, and the Northern Pacific to Pasco or Spokane, thence SP&S to the same extent as the rates apply over through routes via the Twin Cities or Laurel, and Northern Pacific to destination.

Between eastern territory and stations on the SP&S west of Portland, on the Astoria line or on the Keasey branch, or between stations on the Oregon Electric south [fol. 3703] of Portland and eastern territory, the joint rates, via the Twin Cities or Laurel interchanges, apply either via Portland or Willbridge giving the Northern Pacific its maximum haul, or via Pasco or Spokane, giving the SP&S the haul west of those junctions.

Between eastern territory and stations on the SP&S west of Pasco or stations on the Oregon Trunk the joint rates via the Twin Cities or Laurel interchanges apply via Pasco or Spokane thence SP&S, or Wishram, thence Oregon Trunk. To or from stations on the SP&S between Vancouver and Wishram, including Wishram, and stations on the Oregon Trunk the rates also apply via Northern Pacific, Vancouver, thence SP&S, or Wishram, thence Oregon Trunk, but only in connection with shipments of dressed poultry accorded transit privileges at points on the Northern Pacific, north of Vancouver, or grain accorded transit privileges at points on the Northern Pacific, Ridgefield to Everett, inclusive, or at Vancouver.

To stations on the SP&S east of Pasco the interchange is at Spokane.

Similarly between eastern territory and stations on the Northern Pacific on its line of railroad extending north from Vancouver, Washington, to Sumas, Washington, the SP&S participates in certain through routes and joint rates as an intermediate carrier between Pasco or Spokane and Vancouver or Portland.

The Vancouver route applies to all commodities moving to or from stations north of Vancouver to and including [fol. 3704] Centralia, Washington. Specifically, the Northern Pacific provides routing in connection with the SP&S as an intermediate carrier on commodities generally to points on its own line along the coast as far north as Centralia on the same basis as the Northern Pacific can handle the traffic over its own railroad. In so far as stations north of Centralia to and including Sumas, Washington, are concerned while the Northern Pacific does join the SP&S in the routing as an intermediate carrier, it is only in connection with traffic accorded transit privileges in certain instances.

Between eastern territory, on the one hand, and Southern Pacific stations in Oregon and Southern Pacific, Northwestern Pacific, and Santa Fe stations in California, on the other hand, to the extent that through routes and joint rates are in effect via the Twin Cities or Laurel, Northern Pacific, Portland, thence Southern Pacific Company, the same joint rates also apply in connection with the Northern Pacific-SP&S Railway, via Portland.

From the foregoing it is apparent that, as a general rule, the SP&S participates in these joint rates in all cases where that line could reasonably expect to participate, even though the entire haul west of the Twin Cities or Laurel could be performed by the Northern Pacific.

This pattern of the trans-continental rates prevails throughout the rate structure within the territory, Montana and west. For example, rates between SP&S, Oregon [fol. 3705] Electric, or Oregon Trunk stations and Northern Pacific stations east of Spokane in Washington, Idaho and Montana generally apply via the same interchange points mentioned in connection with the trans-continental rates. The same is true, for example, with regard to traffic moving between stations on the Southern Pacific Company in Oregon or California or Northern Pacific stations, Centralia to Ridgefield, inclusive, and Northern Pacific stations east of Spokane.

These latter illustrations, when considered in connection with the preceding discussion concerning joint trans-continental rates, demonstrate that in practically all in-

stances where joint rates exist for direct movement over the Northern Pacific the SP&S participates in those rates to the same extent. As a matter of fact the same routing provisions which govern Northern Pacific joint rates have in practically all instances been made applicable to SP&S rates to the extent that that line could reasonably participate therein.

Q. Mr. Hart, I don't believe I asked you if these Exhibits Nos. 119 through 122 were prepared under your supervision and direction.

A. Yes, sir.

Q. There seems to be a little confusion about Exhibit No. 119. That consists of two sheets, does it not?

A. Yes, sir.

Q. First a typewritten sheet and the second a map, rail-[fol. 3706] road map, of Montana and Washington?

A. Yes, sir.

Q. Mr. Hart, now that you have completed reading your prepared statement I would like to ask you a few specific questions about some evidence which has been placed in the record by the complainant or by intervenors on behalf of the complainant. You will recall that at the hearing in Portland in June 1954 Mr. A. J. Jaynes testified that he would like to be able to ship fresh fruits and vegetables from points on the S. P. and S. System to Sioux City, Iowa, with the possibility of a stop to part unload at Mitchell, South Dakota, and to be able to divert beyond Sioux City any shipments which might be rejected at Sioux City for any reason whatever. Is it possible for Mr. Jaynes to do precisely that under joint through rates as it exists today?

A. Yes. The routing is open today on fresh fruits and vegetables originating at S. P. and S. origins, routed Pasco or Spokane, N. P., Jamestown, Midland Continental Edgeley, North Dakota, thence Milwaukee to Mitchell and Sioux City. Diversion privileges for disposition of rejected shipments are available via that route to the same extent as through Minnesota Transfer.

Q. You mentioned a few moments ago, Mr. Hart, that there is also a route on fruits and vegetables with the Mil-

waukee through Spokane. Is that a route of limited application?

A. No. It is open, so far as I recall.

Mr. Maguire: Could I ask that that question and answer [fol. 3707] be read, please?

(Question and answer read.)

Mr. Maguire: Could I interrupt for clarification.

Is that a route from origins on the S. P. and S. System, Mr. Hart?

The Witness: I was talking about the route from stations on the Northern Pacific at the time, and it has—I should have said it has a limited application to destinations on the Milwaukee in Iowa and South Dakota and some portions, I believe of Minnesota.

Mr. Engel: West of the Transfer?

The Witness: West of the Transfer, yes, sir.

Mr. Maguire: From S. P. and S. origins?

The Witness: From Northern Pacific origins.

Mr. Maguire: How about S. P. and S. origins? That is what we are talking about in this case.

The Witness: I was just talking at that time with reference to our western junction routing of the Northern Pacific.

Mr. Maguire: I am talking about—let's go ahead.

The Witness: So far as I know I don't believe that route is open on S. P. and S. traffic.

Mr. Golden: I think that question was a bit vague. I only intended to clarify the application from Northern Pacific origins.

Mr. Maguire: Oh, from Northern Pacific origins?

[fol. 3708] Mr. Golden: Yes.

Mr. Maguire: O. K.

By Mr. Golden:

Q. You have before you, Mr. Hart, a copy of your exhibit which has been identified as Exhibit No. 120. Would you please explain what that exhibit is and what it shows.

A. Exhibit No. 120 is a statement of mileages between representative stations on the S. P. and S. System and

points in Florida, Georgia, Illinois, Iowa, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, Montana, New York, North Dakota, Oklahoma, Pennsylvania, South Dakota, Texas, and Wisconsin. The mileages via the proposed in connection with the Milwaukee are compared with the mileages via shortest presently available routes in connection with N. P. and G. N. Railways. This exhibit is similar to Witness Engel's Exhibit No. 10 except that we have added in column 5 the number of miles longer routes are greater than short routes. In addition, we have added Great Falls, Montana, which is the largest city in the State of Montana with a population of 39,214, Fargo, North Dakota, which is the largest city in the State of North Dakota with a population of 28,256. That is the 1950 census. In addition, we have shown route Nos. 126 to 162, inclusive, which are the routes via Laurel, Montana, and the C. B. and Q., et cetera, because the distance via these routes is less than via the Twin Cities to such points as Council Bluffs, Kansas City, St. Louis, Oklahoma City, Fort Worth, New Orleans, Atlanta, and Jacksonville.

[fol. 3709] Upon reviewing pages 2 and 3 of this exhibit it will be noted that of the distances between Pasco and the stations in Montana and east thereof to the 24 destinations shown there are only five Milwaukee routes shorter than the routes either of the Great Northern or Northern Pacific. Similar situations will be noted on other pages of the exhibit.

I would also like to point out that on sheet 2, line 25, column 4, the distance via the Milwaukee is shown as 1761 miles, whereas if the distance were computed via Minneapolis it would be 2005 miles. The same situation would exist in many other instances if the Milwaukee mileages were based on the Twin Cities.

Q. Mr. Hart, you will further recall that Mr. Lloyd Meier, who testified at the November 1954 hearing on behalf of the Central Lumber Company of Minneapolis, stated that that company has lumber yards at Linton, North Dakota, and Mobridge, South Dakota, and that it is unable to route a car of lumber originating on the S. P. and S. over the Milwaukee, part unload at Mobridge, South Dakota, with the final destination of Linton. Now, since

that November hearing have you made any investigation to determine where Central Lumber Company has yards located on the Northern Pacific and the Great Northern?

A. Yes.

Q. Are those shown on your Exhibit No. 121?

A. Yes.

Q. Would you please—

[fol. 3710] A. (Interrupting) They are in boxes.

Q. Would you explain the various significance of the colors and markings on the Exhibit No. 121?

A. Well, the stations shown in blue, which are three, are located on the Northern Pacific. The stations shown in red, which are fifteen, are located on the Great Northern. The stations shown, boxed in brown, which are located on the Great Northern, Northern Pacific are eleven. The stations shown in green, located on the Milwaukee and Great Northern, are two. The stations blocked in black located on the Milwaukee and Northern Pacific is one. And the stations shown in yellow located on the Milwaukee, is located on Milwaukee and Great Northern and Northern Pacific is one.

Q. Referring back to the situation which Mr. Meier explained, that is, Central Lumber Company is unable to originate a car on the S. P. and S. with the destination of Linton, North Dakota, stop that car to part unload at Mobridge, South Dakota, is that an unusual situation?

A. Neither the Northern Pacific nor Great Northern nor Milwaukee have followed a policy of establishing short haul routes for the purpose of permitting stops to part unload a carload of lumber originating at Morton, Washington, for example, delivered to the Northern Pacific at Terry, Montana, could not be partly unloaded at Bismarck, North Dakota, with final destination at Linton at the joint [fol. 3711] through rate. The same would be true as to any other destination on the Northern Pacific which is common with the Milwaukee. Similarly the joint through rate would not be applicable to a carload of lumber originating on the Northern Pacific to part unload, for example, at Grafton, North Dakota, on the Northern Pacific, with final destination at Bathgate, North Dakota, on the Great Northern.

Q. By limiting your showing on Exhibit No. 121 to points at which Central Lumber Company has yards, you do not, of course, intend to imply that those are the only points on the Northern Pacific where there are lumber yards?

A. No, sir, certainly not, generally all the points on the Northern Pacific, in Wisconsin, Minnesota, North Dakota, and in Montana, east of the lumber producing territory would have anywhere from one to several dealers of one sort or another engaged in the sale of lumber products.

Q. You will further recall that Mr. S. W. W. Carr who testified at the proceeding in this case at Portland last June mentioned the movement of hogs from Sioux Falls, South Dakota, to Portland, Salem, and Cornelius, Oregon. Now, have you prepared an exhibit which would show the tariff routes presently available from Sioux Falls to Portland?

A. Yes. The available routes are listed on my Exhibit No. 122.

Q. Do you have any comments to make concerning that exhibit?

A. I would like to point out that the exhibit shows there are presently in existence 18 different routes, and that the [fol. 3712] Milwaukee has routes from Sioux Falls via the Twin Cities and Edgeley, North Dakota, and the N. P. also via the Twin Cities, Edgeley, North Dakota, N. P. Spokane and Pasco and S. P. and S. also via the Milwaukee Council Bluffs, Iowa, Union Pacific, Ogden, Utah Southern Pacific Portland or East Portland, Oregon and Union Pacific.

Q. Why did you not include Salem and Cornelius in that exhibit?

A. There are no specific point-to-point rates from Sioux Falls to Salem or Cornelius, therefore distance rates based on the shortest mileage, computing at junction points where the lading can be handled without transfer and which are applicable in connection with the N. P., or G. N., S. P. and S. and O. E. or S. P. will also apply via the Milwhukee Marengo, Washington, or Plummer, Idaho, Union Pacific Portland or East Portland and Southern Pacific.

Q. Does the Milwaukee also have rates on livestock from South St. Paul to Portland via Marengo?

A. Yes, that route was established April 1, 1954, in Supplement No. 39 to Trans-Continental Freight Bureau tariff, T.C.F.B. Tariff No. 52-H, Agent W. J. Prueter's I.C.C. No. 1534.

Q. Mr. Hart, Mr. Tein has shown on his Exhibit No. 118 sheep which originated in eastern Washington on the Northern Pacific which the Great Northern received in interchange at Spokane destined to points on the Great [fol. 3713] Northern in Montana for grazing in the year 1954. Do you have any information as to other sheep which originated on the Northern Pacific in 1954 either in eastern Washington or in Idaho?

A. Yes. In May of 1954 we had a shipment of 15 carloads of sheep which originated at Keystone, Washington, moved via the Northern Pacific to Spokane, thence Milwaukee to Seasons, Idaho, a local point on the Milwaukee.

Also in May of 1954 we had a shipment of four carloads of sheep which originated at Rathdrum, Idaho, a common point between the Milwaukee and Northern Pacific, which moved Northern Pacific to Butte thence Milwaukee to Ringling, Montana, a local point on the Milwaukee.

In June of 1954 we originated a 21-car shipment at Eltopia, Washington, which moved Northern Pacific to Spokane, thence Union Pacific to Coey, Washington, a point on the Union Pacific just north of Rockford.

In July a shipment of 33 carloads moved from Athol, Idaho, Northern Pacific to Superior, Montana, point on our line.

Q. In which of those shipments, Mr. Hart, would there be a through, a joint through, rate applicable to an eastern market such as South St. Paul or Chicago?

A. From Athol, Idaho, to Superior, Montana.

Q. Do you have any information as to national forests adjacent to the Northern Pacific in Montana where lands are available for summer grazing of sheep?

[fol. 3714] A. Yes.

Q. Would you please name those national forests and state after each in order its rated capacity for sheep grazing and the number of sheep for which the Forest Service issued permits in 1954?

A. I received from the Regional Office, U. S. Forest

Service at Missoula, the following information—I will first name the forests, then the capacity and number of sheep and the number for which permits were issued in 1954—Bitterroot four thousand six hundred. In other words, I meant by that the National Forest was Bitterroot and the capacity in number of sheep was 4,000 and the number of which permits were issued in 1954 was for 600 head.

Mr. Maguire: Not 4,600 sheep, then?
The Witness: No.

A. (Continuing) Cabinet, twenty-two hundred, fifteen fifty. Deer Lodge—

Mr. Maguire (interrupting): Just a minute. The capacity for twenty-two hundred sheep and there were fifteen hundred fifty permits?
The Witness: No. The permit for the number of head of sheep was for fifteen hundred fifty head, the capacity there was twenty-two hundred.
Mr. Maguire: Oh, I get you. Over the heading, if I may interrupt you a minute, the number of permits is [fol. 3715] the number of sheep covered by issued permits?
The Witness: Yes.

A. Deer Lodge, eight thousand, thirty-one thirty-one. Gallatin, fifty-four nine eleven, thirty-eight seven sixty-one.

Mr. Maguire: Wait a minute.
The Witness: O.K.
Gallatin was 54,911. Then in connection with the permit the number of head was 38,761.

A. Helena, 35,000, 33,621. Lolo, 9,150, 3,048.

By Mr. Golden:

Q. Now, you have totaled those up, have you not, and come out with a figure which represents the unused capacity on those national forests in heads of sheep?
A. The capacity in number of sheep for those forests

was 113,261, and the permits that were issued were to cover 80,711 head.

Q. If you subtract the 80,711 from the 113,261, you would come out with the unused grazing capacity of those forests, would you not?

A. Of 32,550.

Q. Are these national forests the only lands along the Northern Pacific that are used for grazing?

A. No. A large percentage of sheep grazed along our railroad are grazed on private land such as that owned by Anaconda Copper Mining Company for example, and that is located in Montana at Heron, Trout Creek, and Superior, Montana.

Q. Mr. Hart, Mr. Engel at about pages 130, 131 and [fol. 3716] 132 of the transcript in this proceeding mentioned the problem which arose in World War II of diverting government shipments which were in transit on the Milwaukee Railroad to the Seattle Port of Embarkation to the government's Holding and Reconsignment Depot at Pasco, Washington. Was that a matter which was taken care of at that time to the satisfaction of the government?

A. Yes, it was, effective May 1, 1953, which covered traffic that was moving via the Milwaukee could be diverted at Spokane or points east of Spokane to Pasco Reclamation Depot for storage and thence moved west via the Northern Pacific on the same basis of rates as would have applied if the shipments had been delivered by the Milwaukee at eastern interchange points with the Northern Pacific.

Q. Is there any longer a Holding and Reconsignment Depot at Pasco, Washington?

A. Yes. However, the Army recently, in a letter dated March 30, 1955, have requested the elimination of Pasco as a transit point, effective April 15, 1955, and which has been approved by the Western Traffic Association.

Q. So that problem of—

A. (Interrupting) Therefore the Section 22 quotation W.T.A. No. 38 is to be amended accordingly, eliminating Pasco as a transit point.

Mr. Golden: You may cross-examine, Mr. Maguire.

Cross-examination.

[fol. 3717] By Mr. Maguire:

Q. Let's take your last comment, Mr. Hart, first. And that has to do with this arrangement with the United States Government covered under a Section 22 Quotation, I presume, which was the May 1, 1953 arrangement for transit?

A. Yes, sir.

Q. And diversions?

A. Yes, sir.

Q. That Section 22 Quotation was cancelled or terminated immediately after the conclusion of World War No. II, was it not?

A. Not that I recall or know of, because that transit arrangement today is still carried in, for instance, W.T.A. Section 22 Quotation No. 38. Originally it was published in Section 22 Quotation Nos. 16-C, 19-A, and 21-A.

Q. Is that available via the Milwaukee, that quotation?

A. Yes.

Q. The one that we are talking about?

A. Yes. I will show you, if you wish.

Q. The Pasco Depot, however, continued in operation during the Korean War or Police Operation, as it has been called, didn't it?

A. Yes, sir.

Q. I want to consider some of the things you stated in your prepared statement, and for the mutual convenience of you and me I am going to refer to the page number of your statement.

In the second paragraph on the bottom of page 5 you state that the Northern Pacific has treated the S. P. and S. [fol. 3718] and its subsidiaries as part of its railroad in the matter of through routes and joint rates on trans-continental traffic. Of course, by that you mean to say that they have treated, that the Northern Pacific has treated, these lines in the same manner as though they were a part of its railroad?

A. Well, if you want to put it that way.

Q. That is the correct way to put it, isn't it?

A. Well, what do you mean by same manner?

Q. I think we can understand that.

A. Are you talking about rate application?

Q. In the sense of joint rates and through routes in the context used in your sentence.

A. Yes.

Q. Now then, I also presume where you make the statement in the following paragraph to Oregon Electric or Oregon Trunk to join any railroad except the Great Northern in joint rates and through routes, and so forth, I am quite certain you meant by that to say that the Northern Pacific insofar as its officers had a voice in the management of the S. P. and S.?

A. That is right.

Mr. Rockwood: I object to that as argumentative and move the statement be stricken. I think the statement made by the witness is perfectly sound.

Exam. Dishman: The question has been asked and answered. We will let it stand for what it is worth.

[fol. 3719] By Mr. Maguire:

Q. You do not wish to contradict the testimony of Mr. R. E. Smith of your company as to the control exercised by the Great Northern and Northern Pacific over the S. P. and S.?

A. No, sir.

Q. So your testimony should be considered in the light of Mr. Smith's testimony?

A. Yes, sir.

Q. I think there might still be a little confusion as to the net results of your testimony regarding testimony given by Mr. Jaynes with regard to fruit and vegetables. As I understand it, when you talked about an open route via Spokane and the Milwaukee you restricted that entirely to Northern Pacific?

A. Traffic.

Q. Traffic?

A. Right.

Q. Originating on the Northern Pacific?

A. That's right.

Q. And that does not have, that comment of yours has no relationship whatsoever as to traffic originating on the S. P. and S., has it?

A. That's right.

Q. Let's look at your Exhibit No. 120. I notice that throughout this exhibit, while the Milwaukee mileage and route number is shown in each case, you only show either [fol. 3720] the Northern Pacific or Great Northern for comparative purposes and do not at any place show both of those companies for comparative purposes?

A. That's right.

Q. Did you pick the company having the shortest route in each case for comparison?

A. Yes, sir.

Q. Do you have available the figures via the other routes? For example, where you use the Great Northern as the short line do you have the Northern Pacific distance shown?

A. From where?

Q. Well, in any case.

A. Well, by using Witness Engel's exhibit I have; yes.

Q. And really what you were showing by this exhibit is the Laurel Gateway, particularly to the southwest, isn't that true, the distance via the Laurel Gateway?

A. I did show the Laurel Gateway to the southwest, yes.

Q. And wherever you used the Laurel Gateway distance it is because the Laurel Gateway is the most practicable service route between the points under consideration rather than Minnesota Transfer?

A. It is the shortest route.

Q. And is it the most practical service route, do you regard it that way?

A. I do not know about service.

Q. Do you know whether a substantial volume of the [fol. 3721] traffic between the points in question moves via Laurel Gateway?

A. No, sir, I do not.

Q. Then all the further your testimony goes, then, Mr. Hart, is to the effect that in the appropriate publications a route is shown via Laurel?

A. That's right.

Q. But you do not know to what extent that route is used or to what extent it is practicable to use?

A. No, sir.

Q. And, as a matter of fact, the use of the Laurel Gateway as a route was the only method you could employ to show any material, that is, when I say material I mean differences in percentages of more than one or two per cent in favor of one or the other of the Northern lines?

A. I don't know what the per cent is. I didn't figure it. I mean I didn't review it after it was figured to see what extent it was. I think it speaks for itself.

Q. Yes, and if you hadn't used the Laurel Gateway Mr. Engel's would still be the correct ones, they are correct through the Transfer, aren't they, using your distance for the Transfer?

A. They would be the distance for the transfer, yes.

Q. That is the reason you got this exhibit up?

Mr. Rockwood: I think that is argumentative. I might ask Mr. Engel why he left out, he did, he put it in.

Mr. Maguire: You asked him why he left it out, too.

[fol. 3722] Exam. Dishman: He is not on the stand.

Mr. Rockwood: We have the facts here in the record.

Mr. Maguire: You asked him why he left certain things out when you were cross-examining him, now, why can't I have the same latitude?

Mr. Rockwood: If I did, you can have the same latitude. I don't recall, Mr. Maguire.

Mr. Maguire: Can we go along peaceably?

Mr. Rockwood: We can go along.

Exam. Dishman: Well, let's proceed.

By Mr. Maguire:

Q. That was the reason you made up this exhibit, wasn't it, Mr. Hart, was to show that there are tariff routes through Laurel which are shorter than those shown in Mr. Engel's exhibit?

A. Yes, sir, that is one reason. I also added Great Falls and Fargo.

Q. That is right, you added those points.

A. Yes, and we added Duluth, too, both Great Falls and Fargo being the largest cities in both of those states of Montana and North Dakota and served by the Great Northern and Milwaukee and then as far as Fargo is concerned also served by the Northern Pacific.

Q. And, of course, you know by reason of the route to Fargo via the Milwaukee, you know how much business goes over the Milwaukee to Fargo, don't you?

[fol. 3723] A. No, sir, I don't.

Q. From your judgment as a traffic expert can you conceive any shipper in his right mind routing a shipment to Fargo over the Milwaukee in comparison to the direct route over the Northern Pacific?

A. I am not a traffic expert and furthermore I don't know what some of the shippers might do on some of that traffic.

Q. You are not a psychiatrist?

A. No, sir.

Mr. Maguire: That is all. Thank you, Mr. Hart.

Exam. Dishman: Do you have any questions, Mr. Cockrum?

Mr. Cockrum: No, sir.

Exam. Dishman: Do you have any redirect?

Mr. Golden: No, sir.

OFFERS IN EVIDENCE

I would like to offer Exhibits Nos. 119, 120, 121, 122.

Exam. Dishman: I take it there is no objection?

Mr. Maguire: No objection.

Exam. Dishman: Exhibits Nos. 119 through 122 are received in evidence.

(Defendant's Exhibits Nos. 119 through 122, Witness Hart, were received in evidence.)

Exam. Dishman: Witness excused.

(Witness excused.)

Mr. Torinus: I will call Mr. Lea[illegible].

[fol. 3724] H. D. LEAR having been previously sworn testified as follows:

Direct examination.

Mr. Torinus: Perhaps, Mr. Examiner, before I ask Mr. Lear any questions, these exhibits which have been distributed should be identified.

Exam. Dishman: All right, the first will be No. 123. Which is that?

Mr. Torinus: No. 123 is exhibit entitled "Distribution of Eastbound Lumber and Forest Product Shipments" and is a three-page exhibit.

No. 124 is entitled "Carloads of Lumber, Shingles, Lath, Veneer" and so forth, originating on Class One Railroads in the States of Washington and Oregon.

No. 125 is a one-page exhibit entitled "Great Northern Railway Rate of Return."

(Defendant's Exhibits Nos. 123, 124 and 125, Witness Lear, were marked for identification.)

By Mr. Torinus:

Q. You have previously testified at this hearing, have you not, Mr. Lear?

A. Yes, I did.

Q. Before taking up these exhibits I would like to ask you a question or two about Mr. Irwin's Exhibit 52, which is the exhibit headed "Miscellaneous Operating Statistics." Did you check that exhibit to determine whether or not the figures thereon were all taken from the annual reports of [fol. 3725] the carriers of the Interstate Commerce Commission or from computations of the annual reports?

A. I did.

Q. What was the situation?

A. All of these data can either be taken directly or computed from the annual report to the Interstate Commerce Commission, Form A.

Q. Now, taking up your Exhibit No. 123 will you please explain that exhibit, Mr. Lear?

A. Well, Exhibit 123 shows the distribution of the lum-

ber and forest products originating on the S. P. and S. System by destination state. It is a consolidated exhibit of cars of lumber and forest products appearing in my Exhibit No. 46 and Mr. Webb's Exhibit No. 47 and includes all of such cars with the exception of 154 cars which move via the Butte-Silver Bow Gateway in connection with the S. P. and S. and Northern Pacific. I have excluded that 154 cars, which incidentally all terminated in the States of Wyoming, Colorado, New Mexico, and Utah, because there is no comparable Great Northern Gateway off the S. P. and S., and therefore the Great Northern Exhibit No. 46 contains none of such traffic.

Q. Now will you turn to Page 1 and state what that shows, please?

A. Page 1, by my charts, shows the percentage distribution by territories of the lumber contained in Exhibits 46 and 47. It also explains more specifically the territory [fol. 3726] included for lumber in those exhibits. It will be noted that Official Territory comprising the territories east of Indiana-Illinois State Line and north of Ohio and Potomac Rivers received 47.314 per cent of the total traffic or almost half. In addition the so-called Western Trunk Line east, States of Wisconsin, Illinois, Iowa, and Missouri, received almost 26 per cent of the total traffic. These two areas together which can be reached through the Minnesota Transfer or Sioux City Gateways constitute in excess of 73 per cent of the total eastbound lumber products involved in this case that originated on the S. P. and S. System.

Q. Does that complete your explanation of Page 1, Mr. Lear?

A. I would like to mention the data from which this portion of Page 1 was taken.

Q. That is shown on Page 2, is it?

A. Page 2 and Page 3.

Here the individual state figures both in the number of cars and the per cent of the total traffic is shown subdivided between competitive and non-competitive traffic.

By competitive traffic here I mean where the rate from point of origin to final destination would apply over either the route S. P. and S. Spokane, Milwaukee, to Milwaukee

stations or via the route Union Pacific Marengo Milwaukee or S. P. Portland U. P. Marengo Milwaukee.

In this Official Territory and Western Trunk Line east where 73 per cent of the total cars terminate, it will be [fol. 3727] seen that almost half of these cars are now competitive in that they are open to Milwaukee solicitation. The figure would be the sum of line 25 and line 32 on Page 2 or an excess of 36 per cent of the grand total of the cars involved in this proceeding.

Q. How about the total eastbound lumber traffic to all territory? What percentage of that was competitive, Mr. Lear?

A. Of the total of 31,667 cars 40 per cent, 40 point 481 per cent is now competitive. I might add that should the restrictions against the Marengo Gateway on eastbound lumber be removed, that practically or a large percentage of the remaining cars would also become competitive.

Q. Now I would like to ask you another question about Page 1. Will you explain the significance of the red line on the map on Page 1?

A. The red line on Page 1, extending from North Dakota through Texas, along roughly the Western boundaries of those states represents the western extremity of lumber shipments included in Exhibits 46 and 47 with the exception of the 154 cars previously mentioned.

Q. What is the significance of the area east of the red line shaded in red?

A. Well, the area shaded in red which extends across the States of Idaho, Montana, North Dakota, and Minnesota represents the fact that all stations in those areas are not included in Exhibits 46 and 47. Local stations on [fol. 3728] the Great Northern and local stations on the Northern Pacific and common points between the Northern Pacific and Great Northern only have been excluded. This traffic was that which was excluded from my Group 1 and 2 of Exhibit 46. The reason for the exclusion is that there would be no available routing to such points should the Milwaukee succeed in this proceeding.

Q. And traffic to and from those Great Northern and Northern Pacific stations was not included in Exhibits 46 or 47 either, was it?

A. That is correct.

Q. It was not included?

A. It was impossible to show on a map of this size just exactly which stations were included and which were not. By shading the area it indicates that certain stations were, but not all stations. The shaded area about the State of Nebraska represents local points on the Chicago, Burlington and Quincy Railroad with routing restricted via the Laurel Gateway. Similarly the shaded area in the State of Texas represents local points on the Fort Worth and Denver Railroad with routing restricted via the Laurel Gateway. Cars to local points on the areas of the two railroads named are not included in Exhibit 46.

Outside of that, the red line beginning at the North Dakota-South Dakota border and extending to the Mexican border represents the western extremity of the present application of rates through Minnesota Transfer, Aber- [fol. 3729] deen, South Dakota or the Missouri River Gateways, and all traffic terminating east of that red line with the exceptions noted is included in my Exhibit 46 with the additional exception that the small area in New Mexico and the corner of southeastern Colorado was not included.

Q. This exhibit covers, however, also the traffic included in Exhibit 47?

A. That is correct.

Q. Does that complete your explanation of Exhibit No. 123?

A. Yes, sir.

Q. Exhibit No. 124.

A. Exhibit No. 124 shows that carloads of lumber, shingles, lath, veneer, plywood and built-up wood originating on Class One Railroads in the States of Washington and Oregon by years from 1924 through 1953. This data was all taken from the annual reports of the Class One Railroads filed with the State Commissions of Washington and Oregon except the data for the S. P. and S. System, which was taken from company records.

The exhibit compares both in absolute number of carloads originated and by index numbers using the years 1924 to 1928, their average as a basis, for each of the Class One Railroads in each of the states. This exhibit begins with the year 1924 because that is the first year for which

data is available for all of the companies included in the exhibit. I have used the average of the first five years available as the base period.

Q. Now take up Page 1 of Exhibit 124, Mr. Lear.

[fol. 3730] A. Page 1 shows the carloads of these commodities originating on Class One Railroads in the State of Washington. By comparison of figures in Column O it will be seen that by 1953 the carloads originated in that state of forest products were only 73 per cent of the average for the 1924-1928 base period. In other words, Washington railroads over these years had suffered a 27 per cent decrease in their lumber traffic originated.

This is particularly noticeable in the case of the Northern Pacific in Columns F and G. We have seen for that company that they have suffered a 36 per cent decrease under the base period by 1953.

It will be noted also that the Milwaukee in Columns B and C and the Great Northern in Columns D and E have the same index number for the year 1953, namely, 73. But if comparison is made with the years immediately prior to those it will be seen that the Milwaukee has been able to retain a much higher percentage of their lumber products originated than either of the two, Great Northern or Northern Pacific. There is also an increase noted for the S. P. and S. and the Spokane International but the volume of cars originating on those lines was quite small.

Q. Now will you take up Page 2 of this exhibit, Mr. Lear?

A. Page 2 is a similar comparison for the State of Oregon. By comparing Column M it will be noted that the Oregon railroads during the same period have enjoyed 172 [fol. 3731] per cent increase in their lumber traffic which corresponds to a 27 per cent decrease of the Washington railroads.

I would like to call attention to Columns B and C which show the phenomenal increase in lumber loadings off the Southern Pacific. Just as Oregon is becoming the principal West Coast lumber originating state the Southern Pacific has become the principal western lumber originating railroad. Beginning in the base years the average lumber loading on the Southern Pacific was 58,849 cars. By 1953 this

had increased to 187,141 cars per year. This is an increase of 128,292 cars or 218 per cent.

Stated another way, the lumber loading on the Southern Pacific in 1953 of 187,141 cars constituted 73 per cent of the total cars originating on Class One Railroads in that state of 256,418. All the other Class One Railroads in the state combined made up only 27 per cent of the state total.

I would like to call attention to the S. P. and S. data shown in Columns F and G. I might state that this is for the S. P. and S. System, in the State of Oregon, while the base period shows an average loading of 18,231 cars, the year 1953 shows a loading of 40,660 cars, an increase of 22,429 cars. However, in 1953 the total cars loaded on the S. P. and S. System were less than any year loaded on the Southern Pacific back in the base period, 1924 to 1928.

Another fact can be noted about the loadings on the S. P. and S. System, and that is that in the last four years [fol. 3732] the increase has been practically constant. In other words, 1950 has an index of 215; 1951 only 2 points more, 217; and so forth, and the total cars originating on the S. P. and S. System in 1953 are less than the peak year, which was 1942, of 43,370 cars.

Q. Do you have any comment to make with respect to the Great Northern figures on Page 2?

A. Yes, this apparent increase in the Great Northern can easily be explained by the fact that during the base period years the Great Northern only served the Portland, Oregon, area. Beginning in 1926 they extended their lines into the Klamath Falls territory and this increase represents a comparison of the loadings for both territories in the latter years with the loadings in the Portland area only in the earlier years.

Q. Actually the Great Northern loadings are now on the decline, are they not, Mr. Lear?

A. That is correct.

Q. Will you now take up, Mr. Lear, your next exhibit, Exhibit No. 125?

A. Exhibit No. 125 shows the rate of return of the Great Northern Railway for the years 1946 through '54.

Q. Is the source of the information on that exhibit Great Northern Company records?

A. That is correct.

Mr. Torinus: I think this exhibit is self-explanatory.

I have no further questions of Mr. Lear on direct.

Exam. Dishman: We will take a short recess.

[fol. 3733] Exam. Dishman: The hearing will come to order.

Is the witness tendered for cross-examination?

Mr. Torinus: Mr. Lear may be cross-examined, yes.

Cross examination.

By Mr. Maguire:

Q. First turn to your Exhibit No. 123, Mr. Lear. I believe you mentioned that the forty-seven and a fraction per cent shown on sheet numbered one—it is the second sheet—and the proportion which amounts to just under 26 per cent, is all at present available to the Milwaukee?

A. No, sir, I did not. That is the total traffic that went into those two territories, not all of which is competitive. Those percentages appear on page 2 in column G.

Q. All right.

A. The competitive portion thereof appear in column C.

Q. Your competitive portion, then, is what you designate as competitive traffic in your Exhibit 46 and which Mr. Webb designates under the same system of computation in his Exhibit No. 47?

A. That is correct.

Q. Let's take just for an example the State of Illinois. Out of 3,954 cars, under your method of computation 1,397, a little bit more than one third is competitive traffic?

A. Correct.

Q. Of which the Milwaukee can avail itself at the present time?

A. Yes, sir.

[fol. 3734] Q. And the balance is not available to the Milwaukee upon the equality of rates?

A. Correct.

Q. That's the idea.

Mr. Torinus: Via Spokane or Marengo, is that correct, Mr. Lear?

The Witness: That is correct. They are long-haul through the junctions in the State of Washington.

By Mr. Maguire:

Q. Yes.

A. I might add that no effort was made to check any competitive feature where the Milwaukee received it at a midwestern junction.

Q. Yes, that is understood. And, of course, this Exhibit No. 123 is in effect a visualization, first, a consolidation of Exhibits 46 and 47, and then a visualization of that consolidation?

A. As far as lumber traffic goes, yes.

Q. Yes. So far as the exhibit itself goes, that is what it is?

A. Yes.

Q. If you will please turn to Exhibit No. 124. There you commented upon the index figures in connection with the S. P. and S. Railway in Washington and the Spokane International but made the comment that the volume was small which represented those index figures, did you not?

A. Yes, sir.

Q. And similarly your index may have some interest but [fol. 3735] actually it is the volume that counts, isn't it?

A. Well, the index reflects better than the volume the relative change that has occurred over the years.

Q. Yes?

A. That is true.

Q. Although for example you show that the index number in 1953 of the Northern Pacific is 64 as compared to the Milwaukee's index of 73, nevertheless, the number of carloads on the Northern Pacific are about 50 per cent greater for that year than those on the Milwaukee, are they not?

A. Fairly close to that, yes.

Q. And although the Great Northern has the same index figure the actual number of carloads is still about 2,500 cars, 2,400 cars, greater than the Milwaukee's for the same year?

A. In '53 that is true.

Q. That is what I am talking about is '53. Let's restrict ourselves on that.

I just have one thought here with regard to Exhibit 123. While it is a very minor point, nevertheless the territory which can be reached by the Milwaukee in conjunction with the Union Pacific via Marengo, via the Marengo Junction, does not include parts of Indiana and parts of Virginia.

A. That is quite true. And if you will look on page 2 you will find that—

Q. (Interrupting) I know that you have made your de-
[fol. 3736] ductions there?

A. That is correct.

Q. Now, I have a few more questions. Do you have your original Exhibit No. 46 available?

A. Yes, sir.

Q. In your so-called competitive traffic did you include any cars which received any sort of transit privilege, not only—by that I mean anything other than diversion, which is technically a transit privilege—that received any transit privilege such as treatment, remilling, storage, anything of that sort, including loading and unloading, stops to loading and unloading transit, which received transit upon the Great Northern?

A. I will have to answer that question in two parts, Mr. Maguire. If there was a transit operation such as milling or creosoting or anything like that and transit occurred on the Great Northern the car is not in the Exhibit 46. In so far as stopping to partially unload or to complete loading, that information does not appear on the abstracts, it only appears on the waybills in most cases, and to the extent that we show in Mr. Tein's exhibits, Exhibit 114, if the destination of those cars is included in the destination territory, those stop-off cars would be in Exhibit 46. However, no car with a stop in transit on the Great Northern of this eastbound lumber other than these in Exhibit 114 would be included.

[fol. 3737] Q. Now, could you tell me furthermore what sort of a split you made or classification you made of east-

bound lumber shipments moving through the Laurel Gateway, what was done with them?

A. I don't quite understand your question, which way you meant I classified them.

Q. Well, did you take them into consideration at all?

A. If anything moving through the Laurel Gateway went to territory shown on my Exhibit 123 east of that red line in the unshaded portion it is included. If it went west of the red line or to some of the shaded areas, it is excluded.

Q. Then let's take the traffic which went via the Laurel Gateway to points east of the red line in your Exhibit 123. What method did you use with respect to that traffic to determine whether it was competitive or non-competitive as you classified them in your exhibit?

A. Exactly the same basis as traffic moving through Minnesota Transfer. In other words, that the Milwaukee had a route from point of origin in Washington or Oregon to the actual destination via Washington junction where they could either deliver the traffic in the midwest or turn it over to a connection for delivery.

Mr. Torinus: Then it would be competitive?

The Witness: Correct; that is right.

By Mr. Maguire:

Q. And I believe you have already stated, and I may be repeating myself here, in determining whether a given [fol. 3738] carload was competitive or would be competitive or non-competitive you only took into consideration the level of the rate covering that shipment and not any other features such as transit privileges or other conditions which are published in the tariffs as to right of diversion beyond, for example, if it related in determining whether or not that was truly competitive or not?

A. By necessity we took the shipments as they actually moved and the availability or non-availability of transit; if the car was not transited the availability of transit at some other location was not considered.

Q. And also you did not take into consideration whether that shipment could under the present rates be diverted to

points beyond the Milwaukee, to the Milwaukee's connections, did you?

A. Well, if a diversion took place on these shipments it was the final destination which we considered, because that is what appears in the interline accounts.

Q. That statement is correct, but it isn't in answer to my question.

Would you read the question.

(Question read:)

A. Well, I thought my answer answered that, because we had no way of knowing what diversion took place on that car.

Q. I am not asking you what took place. I am asking you whether you took into consideration or gave any considera- [fol. 3739] tion, regardless of the validity of the consideration or not. I am not trying to get you to admit any validity of any consideration. Let's make that clear.

But you did not give any consideration other than in determining whether a shipment was competitive under the present rates or not, other than the level of the rates and the destination, actual destination, did you?

A. Eastbound correct. Westbound, as I explained, on corn and grain products—

Q. (Interrupting.) Well—go ahead.

A. We actually checked the rate from the point of origin through the transit station with the exact privilege that was used and compared the results via the routed movement with whether or not the Milwaukee could have performed exactly the same service at exactly the same rate at the same place. If it were true, it was classified as competitive.

Q. And on your westbound shipments of grain, if the limit of the rate from the country point into the transit station was at such a level via the Milwaukee route, Milwaukee-Union Pacific route, that the credit for the inbound movement, which was applied in connection with the through movement beyond transit station, if that limit was so low it did not permit the entire refund or up to an equal refund as was available via other routes, you did not count that as competitive, then, when you analyzed your individual shipments?

[fol. 3740] A. I don't quite understand that.

Q. Well, let me give you—

A. (Interrupting) I can state it in my own words.

Q. If you don't understand it, don't you state it. Let me state it again.

A. All right.

Q. There has been considerable discussion about the fact that via the Milwaukee-Marengo-Union Pacific route we are unable to refund or give credit for more than nineteen and a half cents of the inbound rate from the country station to the transit station—

A. On corn that is correct, yes, sir.

Q. (Continuing) —and that via other routes in which the Northern lines or one of them participates an inbound credit may be allowed up to twenty-five and a half cents. You remember that?

A. Yes.

Q. Where on a shipment, in any particular shipment, let us say that the inbound rate from the country station to the transit station was 22 cents, which over the Northern route would be credited in its entirety and over the Milwaukee-Union Pacific route would only be credited partially, did you count those shipments as competitive shipments?

A. No, sir.

Q. I think we understand each other.

[fol. 3741] A. I think so.

Q. In the course of your study of the individual movements of lumber eastbound there were numerous shipments which, so far as your records showed, terminated on the Milwaukee, let us say east of Minnesota Transfer, you found a number of them, did you not?

A. Yes, sir.

Q. And a large number of those went to various manufacturing and woodworking plants, did they not, or stations where that business is engaged in?

A. Some went there.

Q. Yes. And, of course, it may be over a year before transit beyond after fabrication or refinishing or whatever is done in transit at these Wisconsin points—let's just pinpoint it there—before that can be determined. Now,

do you know whether the shipments which you showed to points of that sort, as terminated there, were not afterwards moved out to points off the line of the Milwaukee after manufacture, processing, or fabrication?

A. As to whether a particular shipment did or not I couldn't answer for the reason that you say, but I do know the volume of such total possible shipments and have made an estimate of what the gross effect could be.

Q. Well, the answer, then, is that you considered those shipments as terminating?

A. I was forced to, because the lines are now settled in [fol. 3742] 1951 accounts, and this '53 stuff, we won't get the accounting records on for another couple of years.

Q. You said yes, didn't you?

A. Yes, sir.

Mr. Maguire: That is all. Thank you, Mr. Lear.

Mr. Cockrum: May I ask one or two questions, Mr. Examiner?

Exam. Dishman: All right.

Cross examination.

By Mr. Cockrum:

Q. I just want to get a few things clear in connection with your Exhibit No. 46. With respect to your competitive traffic as used in that exhibit, all of that competitive traffic is traffic which could now move at joint rates between the S. P. and S. system points and—strike that—the competitive traffic is traffic that could move at the present time via the S. P. and S. and the Great Northern at joint rates?

A. Yes, sir.

Q. It is likewise traffic that could move via the S. P. and S. and the Milwaukee at joint rates?

A. Not necessarily.

Q. In any event, at rates which are equal to the joint rates of the S. P. and S. and Great Northern?

A. That is correct.

Q. That movement being through Spokane?

A. No. Spokane or Marengo. Of course via the Marengo

rate the origination would be on the Union Pacific or Southern Pacific.

[fol. 3743] Q. Yes. But on traffic originating on the S. P. and S. system points, it could move via the S. P. and S. and the Milwaukee through Spokane at rates which are equal to the present joint rates via the S. P. and S. and Great Northern?

A. No, sir.

Q. Why not?

A. The competitive traffic, as I have defined it here, states, "Involved traffic as defined above which can presently move under equal rates from origin to destination in connection with the Milwaukee Road through its western junctions of Spokane or Marengo." I do not state in there that the origination has to be on the S. P. and S. It has to be a point served by the S. P. and S.

Mr. Torinus: S. P. and S. system?

The Witness: Correct.

By Mr. Cockrum:

Q. S. P. and S. system?

A. Yes.

Q. You do include within the competitive traffic, however, Milwaukee territory on which there is an equality of rates between S. P. and S. points—strike that—in the equality of rates via the S. P. and S. and Milwaukee?

A. I don't quite understand that question, Mr. Cockrum.

Q. Included in your competitive traffic is traffic moving between Milwaukee points and S. P. and S. points on which there is an equality of rates via Spokane, an equality of [fol. 3744] rates with the rates via S. P. and S. and the Great Northern?

A. Any traffic that was listed as competitive in this exhibit the Milwaukee has a competitive rate via their long-haul route, whether it is in connection with the S. P. and S. or whether it is in connection with the Union Pacific, I made no effort to differentiate.

Mr. Cockrum: Will you read that last answer, please.

(Answer read.)

Mr. Cockrum: I think that is all.

Redirect examination.

By Mr. Torinus:

Q. Mr. Lear, I just have one question on redirect, with respect to a question brought up by Mr. Maguire. That has to do with transit at Milwaukee stations east of Minnesota Transfer. Did you make a study of the gross effects on Great Northern revenues shown in Exhibit No. 46, if every car of pine lumber to any station where transit is allowed was considered and eliminated from the study?

A. Yes, I did.

Mr. Maguire: The question is if all pine lumber? Is that the question?

Mr. Torinus: Well, that is correct.

By Mr. Torinus:

Q. Since Mr. Maguire has raised that question, I will ask you whether or not in making your study you considered the cars of pine lumber to these so-called midwestern points where Millwork is fabricated and to which shop lumber is shipped?

[fol. 3745] A. I did.

Q. How many cars of pine lumber to those transit points were in your revenue study, Mr. Lear?

A. I took the lumber transit tariff, Western Trunk Line Issue 422A, I.C.C. A-400, and found every point in that tariff at which transit is permitted on lumber products. I then went through the cars of pine lumber in Exhibit 46 and found the total number of cars of all kinds of pine lumber going to all of these stations. There were 706 of such cars.

Q. Did you make a calculation upon, a calculation of the effect upon, the revenues as shown in your Exhibit 46, which would result if transit had been taken on those 706 cars?

A. Yes, I did.

Q. And will you tell us the result of that calculation and how it was made?

A. First, I had better explain that these transit balances are not settled through interline accounts. They are settled through claim channels. So I had an investigation made of what the average claim on similar cars that the Great Northern was receiving, and based on cars received or transited on the Illinois Central, the Northwestern, the Soo, and the Burlington in this area. The average deduction for Great Northern revenue from these transit operations was $35.47 per car. If every one of these 700 cars contained shop lumber and every one of them was transited, the maximum effect that it would have in excess of 11 million [fol. 3746] dollars Great Northern revenue figure in Exhibit 46 would be $25,042.

Q. Now, Mr. Lear, of course, since Exhibit 46 was made from the interline abstracts you were not able to—

Mr. Maguire (interrupting): Now, just ask him; don't tell him, please.

By Mr. Torinus:

Q. I will ask you, Mr. Lear, since Mr. Maguire objects to my shortening this up by these questions, were you able to tell by the interline abstracts whether or not transit was taken on any of these cars of pine lumber?

A. No.

Q. Why is that, Mr. Lear?

A. Because as they are settled through claim channels and the claim operation is entirely separate from the interline freight account and there is no reference made on the interline accounts to any claims of this nature.

Q. Are those claims for readjustment on cars transited generally received promptly?

A. The claims we are receiving now cover the years 1951, 1952. We are getting a few early 1953 claims but nowhere near the complete year.

Q. You won't know until next year at the earliest what proportion of these cars of pine lumber in your Exhibit 46 were actually transited?

A. If by then.

Mr. Torinus: At this time, Mr. Examiner, I will offer in [fol. 3747] evidence Exhibits 123, 124, 125.

Mr. Maguire: No objection.

Exam. Dishman: Exhibits 123 to 125, inclusive, are received in evidence.

(Defendant's Exhibits Nos. 123, 124, 125, Witness Lear, were received in evidence.)

Mr. Maguire: Mr. Examiner, if you please, there are a couple of questions occurred to me in view of Mr. Torinus's redirect.

Exam. Dishman: All right.

Recross examination.

By Mr. Maguire:

Q. However, Mr. Lear, if you went on the assumption that all of these cars were transited and moved out of those transit points, that would remove them to the extent that they moved on to connections of the Milwaukee rather than the Milwaukee itself, that would remove them from a competitive status to a non-competitive status under the theory set up in your exhibit, wouldn't it, if you had the figures?

A. And if they went to points where through rates don't apply, correct.

Q. Yes, that is, the present rates via Spokane?

A. Or via Marengo.

Q. Or via Marengo, you are quite right.

Mr. Maguire: That is all.

Mr. Torinus: I have no further questions.

[fol. 3748] Exam. Dishman: Witness excused.

(Witness excused.)

Mr. Torinus: I would like to call Mr. Rhedin.

HOWARD V. RHEDIN was sworn and testified as follows:

Direct examination:

Mr. Torinus: May the exhibit which was distributed during the recess be identified, Mr. Examiner, as Exhibit No. 126?

Exam. Dishman: It may be so identified.

(Defendant's Exhibit No. 126, Witness Rhedin, was marked for identification.)

By Mr. Torinus:

Q. Mr. Rhedin, will you state your name, residence, and occupation, please?

A. My name is Howard V. Rhedin. I live in St. Paul, Minnesota. I am assistant general solicitor of the Great Northern Railway at St. Paul.

Q. In your position as assistant general solicitor of the Great Northern in St. Paul, you have charge of the contract files in the Great Northern law department?

A. That is right, yes.

Q. Can you tell us whether or not, Mr. Rhedin, in the contract files in the Great Northern law department there is kept in the regular course of business, there are kept in the regular course of business, duplicates of all operating contracts to which the Great Northern is a party?

[fol. 3749] A. There are, duplicates or originals.

Q. Duplicates or the original contracts themselves?

A. That is right.

Q. Mr. Rhedin, at my request did you have prepared a copy of the contract between the Northern Pacific Great Northern, and S. P. and S. Railway Company covering the S. P. and S. Railway Company operations in the vicinity of Spokane, Washington, between Marshall Junction and Yardley and between Fort Wright and Hillyard, such copy embracing the original operating contract and all effective supplements?

A. I did.

Q. Is Exhibit 126 a true and correct copy of that contract and its effective supplements as disclosed by your

examination of the duplicates and the originals to the extent there are originals in the files of the Great Northern law department?

A. That is correct.

Mr. Torinus: At this time I will offer in evidence Exhibit No. 126.

Mr. Maguire: There are two comments I would like to make at this time, Mr. Examiner. One is that I asked the right or asked the privilege of examining the contracts. These, by the way, cover all the contracts regarding operations of the S. P. and S. in and about Spokane, do they? Is that what these purport to be?

Mr. Torinus: Well, these cover all of the operations of [fol. 3750] the S. P. and S. over those tracks in question in the Spokane terminal area.

Mr. Maguire: Which were covered by the testimony of previous witnesses? In other words, this is a complete showing, is it, as to the territory, operations within the territory, covered by your previous witnesses, as to the Spokane territory?

Mr. Torinus: Within the Spokane terminal area, that is correct.

Mr. Maguire: I asked to examine them, and my request was given most sincere consideration as evidenced by this exhibit, but I do wish to make it clear that this exhibit is one that I didn't ask that it be introduced as an exhibit, merely that I be given an opportunity to examine the contracts. So if it is being introduced, it is being introduced by the defendants upon their own motion and own volition.

Before consenting to the admission of the exhibit, I should like to cross-examine the witness, and, if you will, reserve ruling on that.

Exam. Dishman: All right.

Cross examination.

By Mr. Maguire:

Q. Mr. Rhedin, the office of the secretary of the Great Northern has custody of all of the, it is supposed to have custody of all originals of the, contracts?

A. No, sir.

Q. That is not your system?

[fol. 3751] A. The custody of all original contracts is in the vice-president and general counsel's office.

Q. So you just got this direct from the official files?

A. Direct right from our own files.

Q. And this is a fairly bulky exhibit, and I am just going to ask you a couple of questions about these letters which are listed here.

Do any of these letters—there must be a dozen or so of them—contain negotiations prior or preparatory to the execution of any of the contracts shown in the exhibit?

Mr. Torinus: I will object to the question. The letters speak for themselves, regardless of how Mr. Rhedin may characterize them.

Mr. Maguire: All right, if you don't want that gone into.

Mr. Examiner, I do not object to the contracts, but this has been thrown at me without warning, but I do not wish to delay the progress of this session of the hearing, and so I would like to reserve the right to move to strike any portions of this exhibit at a subsequent hearing which will be held pursuant to informal conversations.

Exam. Dishman: You mean rebuttal hearing?

Mr. Maguire: Rebuttal hearing. I would reserve the right to strike any portions of it which in my opinion are not admissible under the law. Otherwise I don't wish to take a recess and delay the adjournment of this session of [fol. 3752] the hearing at this time. If that may be done and it may be conditionally admitted in that manner, I will not make any objection.

My lips are sealed here by counsel's objection; he will not let me cross-examine this witness, and, technically, I suppose, he may be correct as to what the effect of any of these letters is.

Exam. Dishman: I see no objection to reserving that right.

Exhibit 126 will be received in evidence at this time with that understanding.

Mr. Maguire: Thank you.

(Defendant's Exhibit No. 126, Witness Rhedin, was received in evidence.)

Exam. Dishman: Witness excused.

(Witness excused.)

Mr. Torinus: I will call Mr. Webb.

WALTER J. WEBB was sworn and testified as follows:

Direct examination.

Mr. Golden: Mr. Examiner, Mr. Webb has been sworn and has testified previously in this proceeding.

Exam. Dishman: Mr. Webb?

The Witness: Yes, W-e-b-b.

Mr. Golden: Mr. Webb has two exhibits which I would like to have marked for identification.

Exam. Dishman: The first one will be 127.

[fol. 3753] (Defendant's Exhibit 127, Witness Webb, was marked for identification.)

Exam. Dishman: Which is that?

Mr. Golden: That will be the large sheet which commences "Carload Shipments of Lumber and Forest Products", et cetera.

The next is entitled "Northern Pacific Railway Company, Rate of Return on Net Investment in Transportation Property", which will be Exhibit No. 128.

Exam. Dishman: Yes.

(Defendant's Exhibit No. 128, Witness Webb, was marked for identification.)

By Mr. Golden:

Q. Mr. Webb, were these Exhibits 127 and 128 prepared under your supervision and direction?

A. They were.

Q. Commencing with Exhibit No. 127 will you please explain what that is?

A. The first section of 127 deals with carload shipments of lumber and forest products originated on the Spokane,

Portland and Seattle Railway and stopped to complete loading at Northern Pacific stations east of Spokane, Washington, where mills for such a purpose are located. There were four cars, and car number one on line one there went to Grand Rapids, North Dakota, which is a N.P. local point, and line two to Ulysses, Nebraska, which is a local point on the C. B. and Q., and three and four went to points off the N. P., Brooklyn, Michigan, on the New York Cen-
[fol. 3754] tral, which is located in Ypsilanti, and Houston, Texas. These cars were stopped, number one was stopped, at St. Regis, Montana, and it moved Oregon Electric, S. P. and S., N.P., and was completed loading with spruce and white pine.

Q. I believe the exhibit speaks for itself in that respect, Mr. Webb.

Exam. Dishman: Did Mr. Webb state his position?

Mr. Golden: He has testified previously.

Exam. Dishman: Oh, that is right, he is being recalled.

By Mr. Golden:

Q. Which of the cars in this group of four cars, if any, would be included in your Exhibit No. 47?

A. The car to Brooklyn, Michigan.

Q. That would be the only one?

A. Yes; I believe so. Brooklyn, Michigan, and Houston, Texas, would both be included in that exhibit.

Q. What territory did you check in order to arrive at these four cars?

A. Well, I checked some 23 stations west of Livingston, Montana, where mills are located.

Q. And east of Spokane?

A. Yes, east of Spokane.

Q. What is the second portion of your exhibit?

A. The second portion of the exhibit covers carload shipments of forest products originating on the Spokane, Portland and Seattle Railway system and stopped for par-
[fol. 3755] tial unloading at stations on the Northern Pacific, Livingston, Montana, and east in the year 1953.

Q. How many cars is shown in the lower portion of that exhibit which have been included in your Exhibit No. 47?

A. Three. Those are the cars to Minneapolis, St. Louis Park, and Minnesota Transfer.

Q. And the other six cars, of course, were to non-competitive points?

A. They were.

Q. How many stations are there on the Northern Pacific, Livingston, Montana, and east?

A. There are over 300 agency stations.

Q. And you made a check of all those stations?

A. Yes, I did.

Q. Why was Livingston, Montana, selected as the division between the check of stations where stops might be made to complete unloading and to part unloaded?

A. It was a more or less arbitrary choice to cut down the volume of work because there are really no lumber producing territories east of Livingston.

Q. Did you also make a special check to determine whether or not any cars originating at any point were stopped to part unload at any point on the Northern Pacific by Central Lumber Company?

A. Yes, I did.

Q. Did you find that there were any?

[fol. 3756] A. There were none.

Q. The next exhibit, Mr. Webb, is No. 128. What is that exhibit?

A. That is the rate of return on net investment in transportation properties of the Northern Pacific Railway for nine years, beginning with 1946 and ending with 1954.

Q. I don't believe that requires any further explanation.

A. All right.

Mr. Golden: Mr. Webb is tendered for cross-examination.

Cross examination.

By Mr. Maguire:

Q. I first want to question you, Mr. Webb, very briefly—you won't have to take out your Exhibit 47, I don't believe. You have heard my further cross-examination of Mr. Lear this morning on his Exhibit 46?

A. Yes, sir.

Q. And I believe that you testified that except for the fact that in your Exhibit 47 you used only four months actual figures, which were then blown up to cover the full year?

A. No, that isn't a fact. That was in connection with the Western Trunk line revenue.

Q. Oh!

A. This is a full 12 months study.

Q. I beg your pardon, sir, I got confused on that.

Then these two exhibits were drawn up in identically the same fashion and on identically the same principles? [fol. 3757] A. Yes, sir.

Q. And so having heard my cross-examination of Mr. Lear do you concur in the replies which he gave and are they applicable in theory to the Northern Pacific figures?

A. Yes, sir.

Q. Of course you have shown herein Exhibit 127 only the stops for partial unloading—that is the bottom half of the exhibit—on the lines of the Northern Pacific, didn't you?

A. Yes, sir.

Q. You did not and were unable to tell also of what cars, the number of cars, which the Northern Pacific turned over to their connections were stopped for partial unloading upon your connections, were you?

A. No, sir, the accounts do not show that.

Q. Pardon me?

A. The accounts do not show that.

Q. And so that in the cars which you mentioned or cover in your Exhibit 47, it is possible for all you know to the contrary that there were cars which moved beyond Minnesota Transfer, which is the terminus, or the Twin Cities, the terminus of the Northern Pacific and were stopped for partial unloading upon your connections?

A. Yes, sir.

Q. And, of course, there were cars which received other transit privileges after they had left your line and went [fol. 3758] on to your connections for all you know to the contrary?

A. I wouldn't know for sure.

Q. I am not asking you to say they were; you just don't know one way or the other.

Mr. Maguire: That is all. Thank you, Mr. Webb.

Mr. Golden: That is all.

OFFERS IN EVIDENCE

We offer Exhibits Nos. 127 and 128.

Mr. Maguire: No objection.

Exam. Dishman: Exhibits 127 and 128 are received in evidence.

(Defendant's Exhibits Nos. 127 and 128, Witness Webb, were received in evidence.)

Exam. Dishman: Witness excused.

(Witness excused.)

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